



Ministry  
of Defence

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FAO Tenderer

Your Reference:

Our Reference: 700879368

Date: 20 December  
2021

**Invitation to Tender Reference Number: 700879368 – Procurement of Breaching Shotgun – Project Vanisher – ITT Documentation**

Dear Sirs,

1. You are invited to tender for the Procurement of Breaching Shotgun Tender – Project Vanisher, which is in accordance with the attached documentation.
2. The anticipated date for the contract award decision is April 2022 with delivery of the full capability by March 2023. Please note that these are indicative dates and may change.
3. Your Tender must be submitted electronically via the Defence Sourcing Portal.
4. The Authority requires the tenderer to provide one (1) Offer (Annex A to DEFFORM 47) for each system in each Lot against which it is invited to provide a response (in accordance with DEFFORM 47 Section E Annex A) of quantity five (5) Vanisher systems for the Authority's consideration.
  - a. Lot 1 is for the long-range breaching shotgun;
  - b. Lot 2 is for the short-range breaching shotgun;
  - c. Lot 3 is for the combined breaching shotgun.
5. The Invitation to Tender is available from the Defence Sourcing Portal.
6. As the Defence Sourcing Portal is a new process, it will take longer for you to upload your tender response.
7. You are strongly advised not to leave it until the last day to begin uploading your tender as this may not provide enough time for you to complete your submission. Late tenders may not be accepted.

8. Hard copy, paper or delivered digital tenders (e.g. DVD) are no longer required and will not be accepted by the Authority.
9. Your attention is drawn to the following key dates:
  - a. Tenders are due for return on or before 12:00 UK local time Monday 14 February 2022 UK time through the Defence Sourcing Portal.
10. As trials are anticipated to be undertaken whilst restrictions are in place due to Covid-19, to prevent accidental damage to the equipment, tenderers must provide details on how their equipment is to be disinfected before, during and after the trials. Where no such information is provided by the tenderer, the equipment may not be trialled which will result in your tender submission being deemed as non-compliant and may result in your tender response not being fully evaluated.
11. Where any information has been previously provided as part of the DPQQ and is requested to be provided within the ITT, the tenderer must provide updated data with their tender response.
12. The product being offered at the ITT stage must be the same product offered at the DPQQ stage. Failure to offer the same product will result in your tender submission being deemed non-compliant and may result in your tender response not being fully evaluated.
13. The Authority intends to hold a tenderers conference to go through in detail the tender documentation and to highlight various key aspects of the tender and for you to ask any questions. Please provide e-mail details for all attendees you wish to have invited from your company.
14. Please direct all clarification questions through the Defence Sourcing Portal by Friday 21 January 2022. Any requests for clarification after this date shall not be answered.
15. The Tender Evaluation Methodology and how each aspect is to be evaluated is clearly detailed in Section D to DEFFORM 47. The Authority shall use the Best Technically Affordable method. The tenderer that has the Best technically affordable tender shall be the winner of each Lot as defined in Section D of the DEFFORM 47. This will result in a contract for S3 trials at a minimum order quantity of 5 systems. Failure of S3 trials will result in the next best compliant tender for the relevant lot being offered a contract for S3 trials.
16. Any changes to the ITT documentation shall be issued by the DCC Commercial Team via the Defence Sourcing Portal.
17. Please confirm receipt of this ITT to Josiah Mayled at email: Josiah.Mayled100@mod.gov.uk and provide the details of the persons within your company who would like to be invited to the tenderers conference.

Yours Faithfully

PDF Version Signed

**Nicholas Harris**  
Commercial Manager

**List of Suppliers Invited to Submit a Tender for**  
**The Procurement of Breaching Shotgun - Project Vanisher – post Down-Select Stage**

Supplier Name	Supplier Address	Contact Name	Contact Details
Beechwood Equipment Ltd	Unit 1, Trade City Sunbury on Thames Surrey TW16 7FD	[REDACTED]	[REDACTED]
Ian Edgar (Liverpool) Ltd trading as: Edgar Brothers	Ian Edgar Limited Unit 3 Heather House Lyme Green Business Park Macclesfield Cheshire United Kingdom SK11 0LR	[REDACTED]	[REDACTED]
Viking Arms Ltd	Viking Arms Limited Summerbridge Harrogate North Yorkshire United Kingdom HG43 4BW	[REDACTED]	[REDACTED]

Official

DEFFORM 47 (07/21)  
ITT Number: 700879368

**Invitation to Tender  
for  
The Procurement of Breaching Shotgun –  
Project Vanisher**

Official

## **Contents**

**This Invitation to Tender sets out the requirements that Tenderers must meet to submit a valid Tender. It also contains the draft Contract, further related documents and forms and sets out the Authority's position with respect to the competition.**

**The invitation consists of the following documentation:**

### **1. DEFFORM 47 – Invitation to Tender**

- a. The DEFFORM 47 sets out the key requirements that Tenderers need to meet to submit a valid Tender. It also sets out the conditions relating to this competition. For ease it is broken into:
- b. Section A – Introduction
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- f. Section E – Instructions on Submitting Tenders
  - i. Submission of your Tender
  - ii. Electronic Tender Submission
  - iii. Lots
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  - vi. File Naming Convention
  - vii. Priced and Unpriced Tender Documents
  - viii. Annex A to Section E – Lots
- g. Section F – Conditions of Tendering
  - i. Conforming to the Law
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  - iii. Conflicts of Interest
  - iv. Government Furnished Assets
  - v. Standstill Period
  - vi. Publicity Announcement
  - vii. Sensitive Information

- viii. Reportable Requirements
- ix. Specific Conditions of Tendering
- x. Annex A to Section F – Cyber Security Letter

**2. DEFFORM 47 Annex A – Tender Submission Document (Offer)**

- a. Appendix 1 to DEFFORM 47 - Annex A (Offer) – Information on Mandatory Declarations
- b. Appendix 2 to DEFFORM 47 - Form 1686 – Application to sub-contract or collaborate with an overseas Contractor on work involving official-sensitive and above classified information.

**3. Contract Documents (As per the contents table in the Terms and Conditions)**

- a. Terms & Conditions
  - i. Annex A to Terms and Conditions – Extras
  - ii. Annex B to Terms and Conditions – Extras
- b. Schedule 01 – Definitions of Contract
- c. Schedule 02 – Schedule of Requirements
- d. Schedule 03 – Contract Data Sheet
  - i. Annex A to Schedule 3 – DEFFORM 111 – Appendix to Contract - Addresses and Other Information
- e. Schedule 04 – Contract Change Control Procedure
- f. Schedule 05 – Contractor's Sensitive Commercial Information Form
- g. Schedule 06 – Hazardous Contractor Deliverables, Materials or Substances Statement by the Contractor
- h. Schedule 07 – Timber and Wood Derived Products
- i. Schedule 08 – Acceptance Criteria
- j. Schedule 09 – Project and Engineering Statement of Work
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#### **4. Security Aspects Letter**



## Section A – Introduction

### DEFFORM 47 Definitions

In this ITT the following words and expressions shall have the meanings given to them below:

- A1. “The Authority” means the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland, acting as part of the Crown.
- A2. “Compliance Regime” is a legally enforceable set of rules, procedures, physical barriers and controls that, together, act to prevent the flow of sensitive or protected information to parties to whom it may give an unfair advantage.
- A3. “Conditions of Tendering” means the conditions set out in this DEFFORM 47 that govern the competition.
- A4. “Consortium Arrangement” means two or more economic operators who have come together specifically for the purpose of bidding for this Contract and who establish a consortium agreement or special purpose vehicle to contract with the Authority.
- A5. “Contract” means a Contract entered into between the successful Tenderer or consortium members and the Authority, should the Authority award a Contract as a result of this competition.
- A6. “Contract Terms & Conditions” means the attached conditions including any schedules, annexes and appendices that will govern the Contract entered into between the successful Tenderer and the Authority, should the Authority award a Contract as a result of this competition.
- A7. “Contractor Deliverables” means the works, goods and/or the services, including packaging (and Certificate(s) of Conformity and supplied in accordance with any Quality Assurance (QA) requirements if specified) which the Contractor is required to provide under the Contract.
- A8. “Cyber Security Model” means the model defined in DEFCON 658.
- A9. “Defence Sourcing Portal” means the electronic platform in which Tenders are submitted to the Authority.
- A10. “Government Furnished Information” means information or data issued or made available to the Tenderer in connection with the Contract by or on behalf of the Authority.
- A11. “ITT Documentation” means this ITT and any information in any medium or form (for example drawings, handbooks, manuals, instructions, specifications and notes of pre-tender clarification meetings), issued to you, or to which you have been granted access by the Authority, for the purposes of responding to this ITT.
- A12. “ITT Material” means any other material (including patterns and samples), equipment or software, in any medium or form issued to you, or to which you have been granted access, by the Authority for the purposes of responding to this ITT.

- A13. "Schedule of Requirements" means that part of the Contract which identifies, either directly or by reference, the Contractor Deliverables to be supplied or carried out, the quantities involved and the price or pricing terms in relation to each Contractor Deliverable (Schedule 2).
- A14. The "Statement of Technical Requirement" means that part of the Contract which details the technical requirements (Schedule 19) and acceptance criteria of the Contractor Deliverables (Schedule 8).
- A15. A 'Sub-Contractor' means any party engaged or intended to be engaged by the Contractor at any level of sub-contracting to provide Contractor Deliverables for the purpose of performing this Contract.
- A16. A "Sub-Contracting Arrangement" means a group of economic operators who have come together specifically for the purpose of bidding for this Contract, where one of their number will be the party to the Contract with the Authority, the remaining members of that group being Sub-Contractors to the lead economic operator.
- A17. A "Tender" is the offer that you are making to the Authority.
- A18. "Tenderer" means the economic operator submitting a response to this Invitation to Tender. Where "you" is used this means an action on you the Tenderer.
- A19. A "Third Party" is any person (including a natural person, corporate or unincorporated body (whether or not having separate legal personality)), other than the Authority, the Tenderer or their respective employees.

## Purpose

- A20. The purpose of this ITT is to invite you to submit a Tender, in accordance with the instructions set out in this ITT, to propose a solution and best price to meet the Authority's requirement. This documentation explains and sets out the:
- timetable for the next stages of the procurement;
  - instructions, conditions and processes that governs this competition;
  - information you must include in your Tender and the required format;
  - administrative arrangements for the receipt and evaluation of Tenders;
  - criteria and methodology for the evaluation of Tenders; and
  - Contract Terms & Conditions.
- A21. The sections in this ITT and associated documents are structured in line with a generic tendering process and do not indicate importance and/or precedence.
- A22. The requirement was advertised by the Authority in the Official Journal of the European Union dated 14<sup>th</sup> October 2020 with reference 2020/S 203-495013.
- A23. This ITT is subject to the Defence and Security Public Contracts Regulations 2011.
- A24. This ITT has been issued to all potential Tenderers chosen during the supplier selection stage under the Restricted Procedure.

A25. Potential Tenderers can be found on the Contract Bidders Notice as advertised on the Defence Sourcing Portal (DSP).

A26. Funding has been approved for this requirement.

## ITT Documentation and ITT Material

- A27. ITT Documentation, ITT Material and any Intellectual Property Rights (IPR) in them shall remain the property of the Authority or other Third-Party owners and is released solely for the purposes of enabling you to submit a Tender. You must:
- a. take responsibility for the safe custody of the ITT Documentation and ITT Material and for all loss and damage sustained to it while in your care;
  - b. not copy or disclose the ITT Documentation or ITT Material to anyone other than the bid team involved in preparing your Tender, and not use it except for the purpose of responding to this ITT;
  - c. seek written approval from the Authority if you need to provide access to any ITT Documentation or ITT Material to any Third Party;
  - d. abide by any reasonable conditions imposed by the Authority in giving its approval under sub-paragraph A27.c, which as a minimum will require you to ensure any disclosure to a Third Party is made by you in confidence. Alternatively, due to IPR issues for example, the disclosure may be made, in confidence, directly by the Authority;
  - e. accept that any further disclosure of ITT Documentation or ITT Material (or use beyond the original purpose), or further use of ITT Documentation or ITT Material, without the Authority's written approval may make you liable for a claim for breach of confidence and/or infringement of IPR, a remedy which may involve a claim for compensation;
  - f. inform the named Commercial Officer if you decide not to submit a Tender;
  - g. immediately confirm destruction of (or in the case of software, that it is beyond use) all ITT Documentation, ITT Material and derived information of an unmarked nature, should you decide not to respond to this ITT, or you are notified by the Authority that your Tender has been unsuccessful; and
  - h. consult the named Commercial Officer to agree the appropriate destruction process if you are in receipt of ITT Documentation and ITT Material marked 'OFFICIAL-SENSITIVE' or 'SECRET'.
- A28. Some or all the ITT Documentation and ITT Material may be subject to one or more confidentiality agreements made between you and either the Authority or a Third Party, for example a confidentiality agreement established in the form of DEFFORM 94. The obligations contained in any such agreement are in addition to, and do not derogate from, your obligations under paragraph A27 above.

## Tender Expenses

- A29. You will bear all costs associated with preparing and submitting your Tender. The Authority will not be liable for the costs of any Tender, work or effort incurred by you participating in this tender process, including where the tender process is terminated or amended by the Authority, where the Authority decides not to award a Contract or where you withdraw from the tender process either directly or indirectly as costs under any other Contract with the Authority.

## Consortia and Sub-Contracting Arrangements

- A30. The Authority requires all Tenderers to identify whether any and/or which Consortium Arrangements or Sub-Contracting Arrangements will apply in the case of their Tender, and in particular specify the Consortium Arrangement or Sub-Contracting Arrangement entity or both and their workshare. In the case of a Sub-Contracting Arrangement, the Authority requires all Tenderers to identify the entity that will be the party to the Contract with the Authority.

## Material Change of Control

- A31. You must inform the Authority in writing as soon as you become aware of:
- a. any material changes to any of the information, representations or other matters of fact communicated to the Authority as part of your PQQ response or in connection with the submission of your PQQ response;
  - b. any material adverse change in your circumstances which may affect the truth, completeness or accuracy of any information provided as part of your PQQ response or in connection with the submission of your PQQ response or in your financial health or that of any Consortium Arrangement member or Sub-Contracting Arrangement member; or
  - c. any material changes to your financial health or that of a party to the Consortium Arrangement or Sub-Contracting Arrangement; and
  - d. any material changes to the makeup of the Consortium Arrangement or Sub-Contracting Arrangement, including:
    - i. the form of legal arrangement by which the Consortium Arrangement or Sub-Contracting Arrangement will be structured;
    - ii. the identity of Consortium Arrangement or Sub-Contracting Arrangement;
    - iii. the intended division or allocation of work or responsibilities within or between the Consortium Arrangement or Sub-Contracting Arrangement; and
    - iv. any change of control of any Consortium Arrangement or Sub-Contracting Arrangement.
- A32. If a change described in paragraph A31 occurs, the Authority may reassess you against the PQQ selection criteria. The Authority reserves the right to require you to submit an updated/amended PQQ response (or parts thereof) to reflect the revised circumstances so that the Authority can make a further assessment by applying the published selection criteria to the

new information provided. The outcome of this further assessment may affect your suitability to proceed with the procurement.

- A33. In relation to a change described in paragraph A31, as far as is reasonably practicable, you must discuss any such proposed changes with the Authority before they occur and you must additionally highlight any changes from your PQQ response relating to any change in the Consortium Arrangement or Sub-Contracting Arrangement or any change relating to conflicts of interest following a change, directly or indirectly in your ownership or control or of any Consortium Arrangement or Sub-Contracting Arrangement
- A34. The Authority reserves the right, at its sole discretion to disqualify any Tenderer who makes any material change to any aspects of its responses to the PQQ if:
- a. it fails to re-submit to the Authority the updated relevant section of its PQQ response providing details of such change in accordance with paragraph A33 as soon as is reasonably practicable and in any event no later than 20 business days following request from the Authority; or
  - b. having notified the Authority of such change, the Authority considers that the effect of the change is such that on the basis of the evaluation undertaken by the Authority for the purpose of selecting potential providers to participate in the procurement, the Tenderer would not have pre-qualified

## Contract Conditions

- A35. The Contract Terms & Conditions include all attachments listed in the contents of the Terms & Conditions, such as the Schedule of Requirements, any additional Schedules, Annexes and/or Appendices. The full text of Defence Conditions (DEFCONs) and Defence Forms (DEFFORMS) are available electronically via the Knowledge in Defence (KiD) website.
- A36. Standardised Contract 2 (SC2) conditions are attached.

## Other Information

### A37. **The Armed Forces Covenant**

- a. The Armed Forces Covenant is a promise from the nation to those who serve, or who have served, and their families, to ensure that they are treated fairly and are not disadvantaged in their day to day lives, as a result of their service.
- b. The Covenant is based on two principles:
  - i. That the Armed Forces community would not face disadvantages when compared to other citizens in the provision of public and commercial services; and
  - ii. That special consideration is appropriate in some cases, especially for those who have given most, such as the injured and the bereaved.

The Authority encourages all Tenderers, and their suppliers, to sign the Armed Forces Covenant, declaring their support for the Armed Forces community by displaying the values and behaviours set out therein.

- c. The Armed Forces Covenant provides guidance on the various ways you can demonstrate your support through your Covenant pledges and how by engaging with the Covenant and Armed Forces, such as employing Reservists, a company or organisation can also see real benefits in their business.
- d. If you wish to register your support you can provide a point of contact for your company on this issue to the Armed Forces Covenant Team at the address below, so that the Authority can alert you to any events or initiatives in which you may wish to participate. The Covenant Team can also provide any information you require in addition to that included on the website.

Email address: [employerrelations@rfca.mod.uk](mailto:employerrelations@rfca.mod.uk)

Address:

Defence Relationship Management  
Ministry of Defence  
Holderness House  
51-61 Clifton Street  
London  
EC2A 4EY

- e. Paragraph A37 a to d above are not a condition of working with the Authority now or in the future, nor will this issue form any part of the Tender evaluation, Contract award procedure or any resulting Contract. However, the Authority very much hopes you will want to provide your support.

## Section B – Key Tendering Activities

The key dates for this procurement are currently anticipated to be as follows:

Stage	Date and Time	Responsibility	Submit to:
Invitation to Tender released	20 December 2021	The Authority	All Tenderers
Invitation to Tender uploaded to Defence Sourcing Portal	By 14 January 2022	The Authority	All Tenderers
Tenderers Conference Part 1	3 December 2021	The Authority	All Tenderers
Tenderers Conference Part 2	Conducted as part of trial period (10-14 Jan 2022)	The Authority	All Tenderers
Final date for Clarification Questions / Requests for additional information	21 January 2022	Tenderers	Defence Sourcing Portal
The Authority issues Final Clarification Answers	28 January 2022	The Authority	All Tenderers
Tender Return	12:00 Monday 14 February 2022	Tenderers	Defence Sourcing Portal
Trials in accordance with ITEAP minus S3 testing	Monday 10 January 2022 – Friday 14 January 2022	The Authority	N/A
Tender Evaluation (Estimated)	February 2022	The Authority	N/A
Tender Assessment Panel (Estimated)	March 2022	The Authority	N/A
Full Business Case Approval (Estimated)	February 2022	The Authority	N/A
Standstill Notification (Estimated)	April 2022	The Authority	All Tenderers

### Notes

### Tenderers Conference

- B1. Two Tenderers Conferences are being held as indicated in the table above, it enables the Authority to present the requirement to all Tenderers at the same time. It also provides

Tenderers the opportunity to ask questions about the requirement. The Tenderer must provide the name(s) of those who wish to attend the Tenderers Conference to the abovenamed contact, by the date shown, so that access to the site can be arranged. A maximum of 2 attendees will be permitted. A copy of the presentation along with any questions raised and answers provided will be issued to all Tenderers regardless of attendance to the Tenderers Conference.

## Clarification Questions

- B2. The Authority will automatically copy clarification questions and answers to all Tenderers, removing the names of those who have raised the clarification questions. If you wish the Authority to treat the clarification as confidential and not issue the response to all Tenderers, you must state this when submitting the clarification question and provide justification. If in the opinion of the Authority, the clarification is not confidential, the Authority will inform the Tenderer, who will have an opportunity to withdraw the question. If the clarification question is not withdrawn, the response will be issued to all Tenderers.

## Tender Return

- B3. The Authority may, in its own absolute discretion extend the deadline for receipt of tenders and in such circumstances the Authority will notify all Tenderers of any change.

## Negotiations

- B4. Negotiations do not apply to this tender process.



## Section C - Instructions on Preparing Tenders

### Construction of Tenders

- C1. Your Tender must be written in English, using Arial font size 11. Prices must be in £GBP excluding VAT. Prices must be Firm Price. A price breakdown is not required in the Tender.
- C2. To assist the Authority's evaluation, you must set out your Tender response in accordance with Section D (Tender Evaluation).

### Validity

- C3. Your Tender must be valid and open for acceptance for 210 calendar days from the Tender return date. In addition, the winning Tender must be open for acceptance for a further thirty (30) calendar days once the Authority announces its decision to award the Contract. In the event that legal proceedings challenging the award of the Contract are instituted, before entry into Contract, you must hold your Tender open for acceptance during this period, and for up to fourteen (14) calendar days after any legal proceedings have concluded.

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## Section D – Tender Evaluation

1. This section details how your Tender will be evaluated, the tools used to evaluate the Tender and the evaluation criteria.
2. The tender evaluation methodology has been selected from the MOD – Tender Evaluation – Developing the Evaluation Strategy Commercial Policy Statement dated 1 June 2020.
3. This policy details seven methods for tender evaluation split into three categories. These are

### Absolute Methods

- A1. Value for Money Index
- A2. Weighted Value for Money Index
- A3. Willingness to Pay
- A4. Lowest Price above minimum Quality Score
- A5. Best Technically Affordable Tender

### Relative Method

- A6. Relative Scoring

### Lowest Price Methodology

- A7. Lowest Cost Tender

### Applicable to this Invitation to Tender

4. For the purposes of this tender, the evaluation method is: -

#### **A5. Best Technically Affordable Tender**

### Best Technically Affordable Tender

5. The contract(s) shall be awarded to the tender/tenderers with the highest technical score that is within budget. The budget for this procurement is broken down to each requirement and detailed in the Stage 2 Cost Evaluation section below. Any tenders that are in excess of these budgets will be automatically deemed non-compliant and will be excluded from the tender evaluation process.
6. Lot 3 systems shall be evaluated against the requirements for both Lot 1 and Lot 2.
7. A contract shall be awarded to the highest technically scoring tender for Lot 1 and Lot 2 that is within budget. For the avoidance of doubt, if a Lot 3 system is the highest technically scoring tender within budget against Lot 1 and Lot 2 then only one (1) contract shall be placed.

8. Where the **same** Lot 3 system achieves at least second highest technical score against Lot 1 and Lot 2 and is within budget, a contract will also be placed against Lot 3 for that system.
9. **Where the highest technical score is the same for two or more bidders, the tender with the lowest cost shall be considered the winning tenderer.**
10. For the purpose of the Best Technically Affordable evaluation, the technical score is made up as follows: -
  - a. Lot 1 - Total Technical Score (296 marks available) consists of:
    - i. Score achieved from Annex B to Section D to DEFFORM 47 (296 marks)
  - b. Lot 2 – Total Technical Score (340 marks available) consists of:
    - i. Score achieved from Annex B to Section D to DEFFORM 47 (340 marks)
  - c. Lot 3 – For the avoidance of doubt, no technical score shall be given for Lot 3. Lot 3 systems shall be assessed against Lot 1 and Lot 2.
11. **Each supplier must meet the threshold score against each mandatory, key and priority one SRs to be considered compliant. Failure to achieve the threshold will mean that the tender is non-compliant and excluded from the tender evaluation process.**

## Supporting Reference Documents

12. Defence Conditions (DEFCONs), Defence Forms (DEFFORMs), Defence Standards (DEFSTANs), Allied Quality Assurance Publications (AQAP's) and other reference documents referred to in the Invitation to tender, contract terms and conditions and schedules to the terms and conditions have copies of the extant document at the time of this ITT being issued located within Schedule 21 to the terms and conditions of contract.
13. Where a tenderer discovers that a document has not been provided that has been referenced within the invitation to tender, the tenderer should contact the Commercial Officer as detailed in Box 1 of DEFFORM 111 seeking a copy of the document. Such a request will be considered a clarification question and the clarification question template provided with this Invitation to Tender must be used.
14. Where evaluation criteria in this ITT is linked to a Supporting Reference Document, it is the edition, version or issue number captured in Schedule 21 and associated appendices to the Terms and Conditions of Contract attached to this ITT that will apply.

## Tender Evaluation

15. The tender will be evaluated through a series of stages as described below. Failure to achieve a pass at any stage may result in your tender being considered non-compliant by the Tender Assessment Panel (TAP) at the final stage of the tender evaluation process. Bidders will only be notified of the outcome of the tender evaluation following ratification of the winning tender by the TAP.
  - a. Stage 1 – Initial Commercial Evaluation – Annex A to Section D to DEFFORM 47

- b. Stage 2 – Cost Evaluation
  - c. Stage 3 – Commercial Compliance Documentation & Social Value Evaluation – Annex D to Section D to DEFFORM 47
  - d. Stage 4 – Technical Evaluation – Annex C to Section D to DEFFORM 47
  - e. Stage 5 – Technical Evaluation Against the ITEAP – Annex B to Section D to DEFFORM 47
  - f. Stage 6 – Tender Assessment Panel
16. The Stages detailed above may not be completed in order they are listed except for Stage 6 which will always be the last stage of the evaluation process.
17. Failure to provide the requested documents within the time scale having been notified will result in the tender being automatically excluded from the tender evaluation process.
18. A tender will only be considered to have Passed an Evaluation Stage if all the required documentation has been provided and / or the minimum requirements have been met.
19. As a result of the Design Safety Assessment, the Authority may have to request additional information or conduct additional testing in relation to the natures post Tender Assessment.

## Stage One – Initial Commercial Evaluation – Annex A to Section D to DEFFORM 47

20. The tenderer must complete and submit as part of their tender, a compliant, completed and signed Annex A to Section D to DEFFORM 47.
21. Failure to provide a compliant, completed and signed DEFFORM 47 Section D Annex A will result in the tender being deemed non-compliant and excluded from the tender evaluation process.

## Stage Two – Cost Evaluation

### Schedule 2 – Schedule of Requirements

22. For the purposes of this tender, the budget for the following components excluding Value Added Taxation (VAT) at 20 percent (%):

a. Line Item 1	Lot 1 (Long)	£2,000.00 each;
	Lot 2 (Breach/Short)	£2,500.00 each;
	Lot 3 (Combined)	£3,500.00 each
b. Line Item 2	Essential Ancils	£750.00 each
c. Line Items 3 to 7	Natures	
	Nature drill -	£5.00 per unit
	Lot 1 Nature Type 2 (Effect)	£3.50 per unit
	Lot 1 Nature Type 3 (Practice)	£4.50 per unit
	Lot 2 Nature Type 2 (Effect)	£4.20 per unit
	Lot 2 Nature Type 3 (Practice)	£4.50 per unit
d. Line Items 8 to 36	S3 Tests -	£145,000.00
e. Line Items 37 to 57	Project Management Requirements, and ILS Requirements, and Spares Pack, and Cyber Security Certification (applicable only to items deliverable in year 1)	
		£111,200.00

**For the avoidance of doubt, Line Items 8 to 36 are all optional and only required test for the selected systems shall be contracted for. Line Items 37 onwards are all dependent upon successful completion of S3 testing.**

**The Authority does not expect the tenderer to simply make an offer at the value of the budget for the Lot that they are bidding against.**

23. A tender will only be considered a Pass if the costs offered for the Line Items detailed above not exceed the budgets stated. Exceeding the budgets will result in the tender being deemed non-compliant and excluded from the tender evaluation process.

24. Where a Tenderer is offering more than one bid, the following priced documents must be sent for each bid in addition to any technical documentation that has changed or is specific to a particular proposal:

- a. DEFFORM 47 Annex A (Offer),
- b. Schedule 2 – Schedule of Requirements,
- c. Schedule 12 – Post Design Services
- d. Schedule 13 – Additional Buys
- e. Schedule 14 – Spares Pack

### **Schedule 13 – Additional Buys**

25. The tenderer is required to populate Schedule 13 with Firm Prices for Additional Buys of the Vanisher System and Additional Spares for each year of the 5 years of the contract for each banded quantity of the number of units.
26. The prices provided in Schedule 13 for year 1 must be no greater than the price per item detailed in Schedule 2. If the prices are in excess of the prices identified in Schedule 2, this will result in the tender being deemed non-compliant and excluded from the tender evaluation process.
27. For future years, firm prices will be provided which must not exceed a 3% increase on the previous year. If the prices exceed a 3% increase on the previous year, this will result in the tender being deemed non-compliant and excluded from the tender evaluation process.

### **Stage Three – Commercial Compliance Documentation & Social Value Evaluation – Annex D to Section D to DEFFORM 47**

28. The following documents or information must be completed and returned with supporting evidence where specified.
- a. A copy of the signed Annex A (Offer) to DEFFORM 47 (One (1) for each Lot that is being bid for and each system) and other requirements as detailed on Schedule 2 – Schedule of Requirements;
  - b. Information, as detailed in Appendix 1 to DEFFORM 47 Annex A, in relation to IPR user rights and restrictions;
  - c. If applicable, a completed Appendix 2 to Annex A to DEFFORM 47 – Form1686 - Application to sub-contract or collaborate with an overseas contractor on work involving official-sensitive and above classified information;
  - d. A signed copy of Annex A to Section D to DEFFORM 47 – Commercial Declaration;
  - e. A completed Annex C to Section D to DEFFORM 47 – Technical Evaluation and supporting evidence as required;

- f. A completed Schedule 2 to the terms and conditions of contract – Schedule of Requirements (Completing the relevant Line Items as appropriate for the Lot(s) that you are bidding for) with confirmation of delivery of S3 test completion within 5 months of contract award;
- g. A completed Schedule 5 to the terms and conditions of contract – DEFFORM 539A – Tenderer's Commercially Sensitive Information Form;
- h. A completed Schedule 6 to the terms and conditions of contract – DEFFORM 68 - Hazardous Contractor Deliverables, Materials or Substances Statement by the Contractor;
- i. A completed Schedule 7 to the terms and Conditions of Contract – DEFFORM 691A - Timber and Wood Derived Products;
- j. A completed Schedule 12 to the terms and Conditions of Contract – Post Design and Support;
- k. A completed Schedule 13 to the terms and Conditions of Contract – Additional Buys;
- l. A completed Schedule 14 to the terms and Conditions of Contract – Spares Pack;
- m. A completed Supplier Assurance Questionnaire and any supporting evidence, such as a Cyber Implementation Plan;
- n. A signed Cyber Security Letter at DEFFORM 47 Section F Annex A with your company's address inserted;
- o. A completed Schedule 17 to the terms and Conditions of contract – DEFFORM 024 - Bank / Parent Company Guarantee (if applicable);
- p. A completed Schedule 18 to the terms and Conditions of contract – Equipment Breakdown Structure;
- q. A completed Schedule 20 to the terms and Conditions of Contract – DEFFORM 528 – Import and Export Information;
- r. If applicable, a completed and signed Statement Relating to Good Standing;
- s. If applicable, details of any deliverables under the contract that contain asbestos, or that use substances that deplete the ozone layer;
- t. Evidence against each Model Award Criteria as detailed in DEFFORM 47 Section D Annex D and associated Appendices;
- u. Evidence of maximum insurance cover (including all layers) on company headed paper, signed at minimum of director level; and
- v. Confirmation that your organisation holds the minimum levels of insurance as required by UK Statute Law.

29. Any of the above documents that the tenderer considers a "Nil return", the document must be returned stating a "Nil return".



30. Failure to provide the documentation as detailed above will result in your tender being assessed as non-compliant and excluded from the competition.

## **Stage Four – Technical Evaluation – Annex C to Section D to DEFFORM 47**

31. The evaluation of Annex C to Section D to DEFFORM 47 provides confidence to the Authority that the tenderer understands the Project Risk (faced by the tenderer) and safety aspects of the requirement as detailed in Schedule 9 – Project and Engineering Statement of Work.
32. The tenderer is to note that Annex C to Section D to DEFFORM 47 contains detailed information as to what the Authority is expecting to have submitted by the tenderer in response to the stated criteria therein that must be addressed separately, unambiguously and transparently.
33. Responses to this section must be upload to the Defence Sourcing Portal.

## **Stage Five – Technical Evaluation Against the ITEAP – Annex B to Section D to DEFFORM 47**

34. This section evaluates the technical performance of the system and allocates technical marks against each SR being assessed in line with the processes detailed in Annex B to Section D to DEFFORM 47 (ITEAP).
35. The scores available for achieving threshold or objective criteria against SRs are detailed in Annex B to Section D to DEFFORM 47 - ITEAP.
36. The marks achieved against the criteria within Annex B to Section D to DEFFORM 47 will be added to the technical score element of the Best Technically Affordable Tender.
37. Tenderers are invited to attend the trials for their products against SRs in a witness capacity. If tenderers would like to attend trials as witnesses, please make this clear within your tender response and you will be contacted with dates, times and locations for the trials of your systems.

## **Stage Six – Tender Assessment Panel**

38. The Tender Assessment Panel (TAP) shall convene to determine the outcome of the tendering exercise.
39. The Tender Assessment Panel shall comprise of Suitably Qualified and Experienced Personnel (SQEP) from within Defence Equipment & Support, Soldier Training & Special Programmes, Dismounted Close Combat (DE&S STSP DCC) team. As a minimum the TAP shall comprise of representatives from Commercial, Project, Engineering, ILS, Quality and Safety functions.
40. The TAP shall be chaired by DES LE STSP-DCC-Comrcl- SCO or their authorised representative.
41. it is expected the TAP shall consist of the following people (subject to availability) but as a minimum each function shall be represented:

Commercial	DES LE STSP-DCC-Comrcl- SCO
Engineering and Project Management	DES LE STSP-DCC-STALETH-Proj-Ldr
TTLS	DES LE STSP-TSSP-TTLS-Lead

42. The listed team members below shall evaluate their specific aspects of the tender in isolation before the Tender Assessment Panel (TAP) is convened.

Commercial	DES LE STSP-DCC-Comrcl-Mgr1
	DES LE VDM-Comrcl-Offr1a
Engineering and Project Management	DES LE STSP-DCC-STALETH-Proj-PM2
	DES LE STSP-DCC-STA-Snr-Eng
Safety	DES LE STSP-DCC-Safety-Mgr
	DES LE STSP-DCC-Safety1

43. The TAP has the final decision on the outcome of the tendering exercise.
44. Following the TAP, the Authority shall inform the tenderers the outcome of the competition.

## Technical Score Summary

45. In determining the score of the Best Technically Affordable Tender, this is calculated by totaling the Technical Scores achieved against the ITEAP:
- Score achieved against Annex B to Section D to DEFFORM 47 – ITEAP Max 296 (Lot 1) or 340 (Lot 2) marks

## Summary of Available Marks

Annex B to Section D to DEFFORM 47 - ITEAP	Technical Compliance	296 (Lot 1) or 340 (Lot 2) Marks
Total Marks Available		<b>296 (Lot 1) or 340 (Lot 2) Marks</b>

### **Compliance Statement**

**Statement 1:**

I confirm a signed Annex A to DEFFORM 47 (Offer) priced within the budget(s) stated in Section D to DEFFORM 47 for all requirements detailed on Schedule 2 – Schedule of Requirements has been provided.

**Statement 2:**

I confirm any clarification questions and or challenges to process, procedures and marking scheme detailed within the ITEAP (Annex B to Section D to DEFFORM 47) have been raised during the period for which clarification questions can be submitted in regard to the tender.

**Statement 3:**

I acknowledge and accept that for any assessment criteria that has a PASS/FAIL outcome, evaluation as detailed in DEFFORM 47 Section D and associated Annexes and Appendices, that should result in a FAIL will result in the tender being deemed non-compliant and therefore excluded from the competition unless specified in DEFFORM 47 Section D.

**Statement 4:**

I confirm unconditional acceptance of the Authority's Terms and Condition of Contract including associated Schedules.

**Statement 5:**

I confirm the submitted tender is free from any assumptions and provisos.

**Statement 6:**

I acknowledge that my company will not be notified of an unsuccessful tender until after the Tender Assessment Panel has convened.

**Statement 7:**

I confirm that the products delivered for trials are the exact same products for which supporting evidence has been provided against the evaluation criteria detailed in DEFFORM 47 Section D and associated Annexes and Appendices.

By signing this document below, I confirm unconditional acceptance of the above statements

<b>Dated this.....day of ..... Year .....</b>	
<b>Signature:</b>	<b>In the capacity of</b>
(Must be original)	(State official position e.g. Director, Manager,

**Name:** (in BLOCK CAPITALS)

**Duly authorised to sign this Tender for and on behalf of:**

(Tenderer's Name)

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**Social Value**

1. The UK Public Services (Social Value) Act came into force on 31 January 2013 which require public services to think about how they can also secure wider social, economic, and environmental benefits through the contracts that are placed. The UK Government Policy Paper - Procurement Policy Note 06/20 – taking account of social value in the award of central government contracts sets out how Government Departments should take account of social value in the award of central government contracts by using the Social Value Model.
2. Social value has a lasting impact on individuals, communities, and the environment. Government has a huge opportunity and responsibility to maximise benefits effectively and comprehensively through its commercial activity. Social value will be evaluated based on qualitative responses from tenderers, and not on volumes. All tenderers must set out what they will deliver and how they will deliver it and it is this information that will be scored in bid evaluations.
3. Tenderers must ensure that any benefit identified as social value in their tender is over and above the core deliverable/s of the tender or any resulting contract.
4. The Social Value Model ('the Model') sets out government's social value priorities for procurement. There are 5 themes and 8 policy outcomes which flow from these themes, as follows:

Themes	Policy Outcome
1. COVID-19 Recovery	1. Help local communities to manage and recover from the impact of COVID-19
2. Tackling Economic Inequality	2. Create new businesses, new jobs and new skills 3. Increase supply chain resilience and capacity
3. Fighting Climate Change	4. Effective stewardship of the environment
4. Equal Opportunity	5. Reduce the disability employment gap 6. Tackle workforce inequality
5. Wellbeing	7. Improve health and wellbeing 8. Improve community cohesion

2. Each policy outcome within the Model has been designed so that the Authority can easily assess and evaluate the relevant social value offered in tenders and manage the social value delivered in contracts.



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3. For this ITT, the following three themes will be evaluated:
  - a. Tackling Economic Inequality
  - b. Fighting Climate Change
  - c. Wellbeing
4. The Themes of COVID-19 Recovery and Equal Opportunity will not be assessed.
5. For each of the above three themes, the Model Award Criteria and the Model Award Sub Criteria has been captured in Appendices 1 to 14 to Annex D to Section D to DEFFORM 47.
6. Using a maximum of 500 words per Model Award Criteria (Appendices 1 to 14 to Annex D to Section D to DEFFORM 47), the tenderer must describe the commitment their organisation will make to ensure that opportunities under the Contract deliver the Policy Outcome and Delivery Objectives. If a response contains more than 500 words, only the first 500 will be evaluated.

To Note: Your response must be written in English, using Arial font size 11.

- a. All Tenderers must include in their submission for each Model Award Criteria:
  - i. The 'Method Statement', stating how the tenderer will achieve this and how their commitment meets the Award Criteria, and
  - ii. a timed project plan and process, including how the tenderer will implement their commitment and by when. Also, how the tenderer will monitor, measure and report on their commitments / the impact of their proposals. Tenderers should include but not be limited to:
    1. timed action plan
    2. use of metrics
    3. tools/processes used to gather data
    4. reporting
    5. feedback and improvement
    6. transparency
  - iii. how you will influence staff, suppliers, customers, and communities through the delivery of the Contract to support the Policy Outcome, e.g. engagement, co-design/creation, training and education, partnering/collaborating, volunteering.
7. The Tenderers response to these requirements will be assigned a Pass or Fail by the Authority based upon an assessment of the degree to which the response documents meet the below criteria. A fail against any of the social value Model Award Criteria will render your tender non-compliant resulting in elimination from the competition and no further evaluation of the tender will be carried out.

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For the purposes of para 6 above the criteria for awarding the score is as follows:	Score
<p>The response broadly meets what is expected for the criteria.</p> <p>There are no significant areas of concern, although there may be limited minor issues that need further exploration or attention later in the procurement process. The response therefore shows:</p> <ul style="list-style-type: none"> <li>- Good understanding of the requirements as set out in the Sub-Criteria.</li> <li>- Sufficient competence demonstrated through relevant evidence.</li> <li>- Some insight demonstrated into the relevant issues.</li> <li>- The response addresses most of the social value policy outcome and also shows general market experience.</li> </ul>	Pass
<p>The response does not provide a proposal or completely fails to meet the required standard:</p> <ul style="list-style-type: none"> <li>- There is at least one significant issue needing considerable attention.</li> <li>- Proposals do not demonstrate competence or understanding.</li> <li>- The response is light on detail and unconvincing.</li> <li>- The response makes no reference to the applicable sector but shows some general market experience.</li> <li>- The response only makes limited reference (naming only) to the social value policy outcome set out within the invitation.</li> </ul>	Fail

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8. The table below identifies each of the three themes, the Policy Outcome, Model Award Criteria, Sub Criteria and the Appendix to Annex D to Section D to the DEFFORM 47 that provides further information to aid the tenderer to submit their responses against each requirement as per paragraph 6 above.

Theme	Policy Outcome	Model Award Criteria	Sub Criteria	Appendix
Tackling Economic Inequality	Create new businesses, new jobs, and new skills	2.1	Entrepreneurship, growth and business creation	1
		2.2	Employment	2
		2.3	Education and training	3
	Increase supply chain resilience and capacity	3.1	Diverse supply chains	4
		3.2	Innovation and disruptive technologies	5
		3.3	Modernising delivery and increasing productivity	6
		3.4	Collaboration throughout the supply chain	7
		3.5	Manage cyber security risks	8
Fighting Climate Change	Effective stewardship of the environment	4.1	Additional environmental benefits	9
		4.2	Influence environmental protection and improvement	10
Wellbeing	Improve health and wellbeing	7.1	Support health and wellbeing in the workforce	11
		7.2	Influencing support for health and wellbeing	12
	Improve community integration	8.1	Collaborate in codesign and delivery	13
		8.2	Influence to support strong, integrated communities	14

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Theme 2	Tackling Economic Inequality	Policy Outcome	Create new businesses, new jobs, and new skills
Model Award Criteria (MAC) 2.1	Model Award Sub Criteria		
Effective measures to deliver any/all of the following benefits through the contract: Create opportunities for entrepreneurship and help new organisations to grow, supporting economic growth and business creation.	<p><b>Sub-Criteria for MAC 2.1: Entrepreneurship, growth and business creation:</b></p> <p>Activities that demonstrate and describe the tenderer's existing or planned:</p> <ul style="list-style-type: none"> <li>• Understanding of the level of Small, Medium and Large organisations and Voluntary, Community and Social Enterprises and Mutuels participation in the contract supply chain.</li> <li>• Identification of opportunities to grow supplier diversity in the contract supply chain or in the location/community where the contract is performed, including SME and VCSE participation and new business creation.</li> <li>• Engagement activities for potential new suppliers to the contract supply chain, prior to awarding subcontracts. Illustrative examples: advertising upcoming opportunities in accessible media; raising awareness of future opportunities to target audiences; meet the buyer events; awareness raising by guidance or events of how to tender effectively for public supply chain contracts.</li> <li>• Measures to make the supply chain working environment conducive to a diverse range of suppliers and growing businesses, including but not limited to: <ol style="list-style-type: none"> <li>1. structuring the supply chain selection process in a way that ensures fairness (e.g. anti-corruption) and encourages participation by new and growing businesses.</li> <li>2. advertising supply chain opportunities openly and to ensure they are accessible to new and growing businesses, including advertising subcontracting opportunities on Contracts Finder.</li> <li>3. ensuring accessibility for disabled business owners and employees.</li> <li>4. prompt payment.</li> </ol> </li> </ul>		

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	<b>Illustrative examples:</b> co-design and co-creation of services; collaborative performance management; appropriate commercial arrangements; inclusive working methods and use of inclusive technology; creating opportunities for entrepreneurship and helping new, small organisations to grow.
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Theme 2	Tackling Economic Inequality	Policy Outcomes	Create new businesses, new jobs, and new skills
Model Award Criteria (MAC) 2.2	Model Award Sub Criteria		
Effective measures to deliver any/all of the following benefits through the contract: Create employment and training opportunities particularly for those who face barriers to employment and/or who are located in deprived areas, and for people in industries with known skills shortages or in high growth sectors	<p><b>Sub-Criteria for MAC 2.2: Employment</b></p> <p>Activities that demonstrate and describe the tenderer's existing or planned:</p> <ul style="list-style-type: none"> <li>• Understanding of employment and skills issues, and of the skills and employment shortages of high growth sectors relating to the contract.</li> </ul> <p><b>Illustrative examples:</b> demographics, skills shortages, new opportunities in high growth sectors, groups under-represented in the workforce (e.g. prison leavers, disabled people), geographic/local community and skills/employment challenges.</p> <ul style="list-style-type: none"> <li>• Implementation of recruitment practices and employment conditions, such as the five foundational principles of quality work set out in the Good Work Plan (e.g. fair pay, participation and progression, voice and autonomy), in relation to the contract that will attract good candidates from all backgrounds, minimise turnover of staff and improve productivity.</li> <li>• Creation of employment opportunities particularly for those who face barriers to employment, such as prison leavers, and/or who are located in deprived areas, and for people in industries with known skills shortages or in high growth sectors.</li> <li>• Promotion of awareness of careers and recruitment opportunities relating to known skills shortages or in high growth sectors relating to the subject matter of the contract.</li> <li>• Support for the contract workforce by providing career advice, and providing opportunities for staff working on the contract with in-work progression career development into known skills shortages or high growth areas.</li> </ul> <p><b>Illustrative examples:</b> mentoring; mock interviews; CV advice and careers guidance; learning and development; volunteering; influencing staff, suppliers, customers and communities through the delivery of the contract to support employment and skills opportunities in high growth sectors.</p>		

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Theme 2	Tackling Economic Inequality	Policy Outcomes	Create new businesses, new jobs, and new skills
Model Award Criteria (MAC) 2.2	Model Award Sub Criteria		
	<ul style="list-style-type: none"> <li>● Offer of opportunities for work experience or similar activities under the contract.</li> </ul> <p><b>Illustrative examples:</b> work placements, pre-employment courses, paid/unpaid student placements, or paid internships of 6 weeks or more.</p> <ul style="list-style-type: none"> <li>● Support for educational attainment relevant to the contract, including training schemes that address skills gaps and result in recognised qualifications.</li> <li>● Delivery of training schemes and programmes to address any identified skills gaps and under-representation in the workforce for the contract (e.g. prison leavers, disabled people).</li> <li>● Other activities to support relevant sector related skills growth and sustainability such as delivering the following, in relation to the contract.</li> </ul> <p><b>Illustrative examples:</b> careers talks, curriculum support, literacy support and safety talks.</p> <ul style="list-style-type: none"> <li>● Delivery of apprenticeships, traineeships and T Level industry placement opportunities (Level 2, 3, and 4+) in relation to the contract.</li> <li>● Measures to ensure equality and accessibility, without discrimination, to employment and workforce related opportunities on the contract, and promote them so as to be fully accessible.</li> </ul>		

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Theme 2	Tackling Economic Inequality	Policy Outcomes	Create new businesses, new jobs, and new skills
Model Award Criteria (MAC) 2.3	Model Award Sub Criteria		
Effective measures to deliver any/all of the following benefits through the contract: Support educational attainment relevant to the contract, including training schemes that address skills gaps and result in recognised qualifications.	<p><b>Sub-Criteria for MAC 2.3: Education and training</b></p> <p>Activities that demonstrate and describe the tenderer's existing or planned:</p> <ul style="list-style-type: none"> <li>• Understanding of employment and skills issues, and of the education and training issues relating to the contract. Illustrative examples: demographics, skills shortages, new opportunities in high growth sectors, groups underrepresented in the workforce (e.g. prison leavers, disabled people), geographic/local community and skills/employment challenges.</li> <li>• Support for educational attainment relevant to the contract, including training schemes that address skills gaps and result in recognised qualifications.</li> <li>• Activities to support relevant sector related skills growth and sustainability in the contract workforce.</li> </ul> <p><b>Illustrative examples:</b> careers talks, curriculum support, literacy support, safety talks and volunteering.</p> <ul style="list-style-type: none"> <li>• Delivery of apprenticeships, traineeships and T Level industry placement opportunities (Level 2, 3 and 4+) in relation to the contract.</li> </ul>		



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Theme 2	Tackling Economic Inequality	Policy Outcomes	Increase supply chain resilience and capacity
Model Award Criteria (MAC) 3.1	Model Award Sub Criteria		
Effective measures to deliver any/all of the following benefits through the contract: Create a diverse supply chain to deliver the contract including new businesses and entrepreneurs, start-ups, SMEs, VCSEs and mutuals.	<p><b>Sub-Criteria for MAC 3.1: Diverse supply chains</b></p> <p>Activities that demonstrate and describe the tenderer's existing or planned:</p> <ul style="list-style-type: none"> <li>• Understanding of the types of businesses in the market and the level of participation by new businesses, entrepreneurs, start-ups, SMEs, VCSEs and mutuals.</li> <li>• Activities to identify opportunities to open sub-contracting under the contract to a diverse range of businesses, including new businesses, entrepreneurs, start-ups, SMEs, VCSEs and mutuals.</li> <li>• Plans for engaging a diverse range of businesses in engagement activities prior to appointing supply chain members (including activities prior to award of the main contract and during the contract term).</li> <li>• Activities that demonstrate a collaborative way to work with a diverse range of businesses as part of the supply chain.</li> </ul> <p><b>Illustrative examples:</b> co-design and co-creation of services; collaborative performance management; appropriate commercial arrangements; inclusive working methods; and use of inclusive technology.</p> <ul style="list-style-type: none"> <li>• Advertising of supply chain opportunities openly and to ensure they are accessible to a diverse range of businesses, including advertising sub-contracting opportunities on Contracts Finder.</li> <li>• Ensuring accessibility for disabled business owners and employees</li> <li>• Structuring of the supply chain selection process in a way that ensures fairness (e.g. anti-corruption) and encourages participation by a diverse range of businesses, including with regard to new businesses, entrepreneurs, start-ups, SMEs, VCSEs and mutuals.</li> </ul>		

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Theme 2	Tackling Economic Inequality	Policy Outcomes	Increase supply chain resilience and capacity
Model Award Criteria (MAC) 3.2	Model Award Sub Criteria		
Effective measures to deliver any/all of the following benefits through the contract: Support innovation and disruptive technologies throughout the supply chain to deliver lower cost and/or higher quality goods and services.	<p><b>Sub-Criteria for MAC 3.2: Innovation and disruptive technologies</b></p> <p>Activities that demonstrate and describe the tenderer's existing or planned:</p> <ul style="list-style-type: none"> <li>• Understanding of opportunities to drive innovation and greater use of disruptive technologies, green technologies, efficiency, and quality to deliver lower cost and/or higher quality goods and services.</li> <li>• Creation of a design and tendering environment that is conducive to tenders that offer innovation and disruptive technologies.</li> </ul> <p><b>Illustrative examples:</b> outcomes-based specifications enabling alternative approaches to be offered; co-design with users and communities; approaches that invite innovative approaches to be proposed and developed; activities that promote collaboration to access new technologies/green technologies and/or approaches.</p> <ul style="list-style-type: none"> <li>• Measures to ensure the development of scalable and future-proofed new methods to modernise delivery and increase productivity.</li> </ul>		

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Theme 2	Tackling Economic Inequality	Policy Outcomes	Increase supply chain resilience and capacity
Model Award Criteria (MAC) 3.3	Model Award Sub Criteria		
Effective measures to deliver any/all of the following benefits through the contract: Support the development of scalable and future-proofed new methods to modernise delivery and increase productivity.	<p><b>Sub-Criteria for MAC 3.3: Modernising delivery and increasing productivity</b></p> <p>Activities that demonstrate and describe the tenderer's existing or planned:</p> <ul style="list-style-type: none"> <li>• Understanding of scalable and future-proofed new methods to drive greater modernisation of delivery productivity.</li> <li>• Approach to organisational learning and continuous improvement.</li> <li>• Creation of a design and tendering environment that is conducive to the development of scalable and methods to modernise delivery and increase productivity.</li> </ul> <p><b>Illustrative examples:</b> as MAC 3.2 above.</p>		

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Theme 2	Tackling Economic Inequality	Policy Outcomes	Increase supply chain resilience and capacity
Model Award Criteria (MAC) 3.4	Model Award Sub Criteria		
Effective measures to deliver any/all of the following benefits through the contract: Demonstrate collaboration throughout the supply chain, and a fair and responsible approach to working with supply chain partners in delivery of the contract.	<p><b>Sub-Criteria for MAC 3.4: Collaboration throughout the supply chain</b></p> <p>Activities that demonstrate and describe the tenderer's existing or planned:</p> <ul style="list-style-type: none"> <li>• Understanding of opportunities to drive greater collaboration in the supply chain.</li> <li>• Measures to ensure supply chain relationships relating to the contract will be collaborative, fair and responsible.</li> </ul> <p><b>Illustrative examples:</b> engagement; co-design/creation; training and education; partnering/collaborating; secondment and volunteering opportunities.</p>		

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Theme 2	Tackling Economic Inequality	Policy Outcomes	Increase supply chain resilience and capacity
Model Award Criteria (MAC) 3.5	Model Award Sub Criteria		
Effective measures to deliver any/all of the following benefits through the contract: Demonstrate action to identify and manage cyber security risks in the delivery of the contract including in the supply chain.	<p><b>Sub-Criteria for MAC 3.5: Manage cyber security risks</b></p> <p>Activities that demonstrate and describe the tenderer's existing or planned:</p> <ul style="list-style-type: none"> <li>• Understanding of risks affecting the contract, including those affecting the market, industry, sector and country (of origin or of source), and to identify the risks and ways of mitigating and managing them.</li> <li>• Measures to mitigate and manage cyber security risks within the supply chain relating to the contract, including: <ol style="list-style-type: none"> <li>1. engaging with the supply chain to identify and build resilience against cyber security risks</li> <li>2. actions to be taken to actively raise cyber security awareness.</li> </ol> </li> <li>• Commitment to adopting the required technical standards and best practice as a basis for appropriate cyber security controls (appropriate to the contract and risk profile), such as: <ol style="list-style-type: none"> <li>1. the '10 Steps To Cyber Security' advocated by the National Cyber Security Centre for establishing a cyber risk management regime.</li> <li>2. more stringent cyber security measures in the supply chain where necessary, such as Cyber Essentials and Cyber Essentials Plus certification, and having a specific cyber insurance policy for the contract.</li> </ol> </li> </ul>		

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Theme 3	Fighting Climate Change	Policy Outcomes	Effective stewardship of the environment
Model Award Criteria (MAC) 4.1	Model Award Sub Criteria		
Effective measures to deliver any/all of the following benefits through the contract: Deliver additional environmental benefits in the performance of the contract including working towards net zero greenhouse gas emissions.	<p><b>Sub-Criteria for MAC 4.1: Additional environmental benefits</b></p> <p>Activities that demonstrate and describe the tenderer's existing or planned:</p> <ul style="list-style-type: none"> <li>• Understanding of additional environmental benefits in the performance of the contract, including working towards net zero greenhouse gas emissions. Illustrative example: conducting pre-contract engagement activities with a diverse range of organisations in the market to support the delivery of additional environmental benefits in the performance of the contract.</li> <li>• Collaborative way of working with the supply chain to deliver additional environmental benefits in the performance of the contract, including working towards net zero greenhouse gas emissions.</li> <li>• Delivery of additional environmental benefits through the performance of the contract, including working towards net zero greenhouse gas emissions. Illustrative examples: <ol style="list-style-type: none"> <li>1. Enhancing the natural environment such as habitat creation, increasing biodiversity such as increased numbers of pollinators.</li> <li>2. Green space creation in and around buildings in towns and cities, e.g. green walls, utilising roof tops for plants and pollinators.</li> <li>3. Improving air quality.</li> </ol> </li> </ul>		

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Theme 3	Fighting Climate Change	Policy Outcomes	Effective stewardship of the environment
Model Award Criteria (MAC) 4.2	Model Award Sub Criteria		
Effective measures to deliver any/all of the following benefits through the contract: Influence staff, suppliers, customers and communities through the delivery of the contract to support environmental protection and improvement.	<p><b>Sub-Criteria for MAC 4.2: Influence environmental protection and improvement</b></p> <p>Activities that demonstrate and describe the tenderer's existing or planned:</p> <ul style="list-style-type: none"> <li>• Understanding of how to influence staff, suppliers, customers, communities and/or any other appropriate stakeholders through the delivery of the contract to support environmental protection and improvement.</li> <li>• Activities to reconnect people with the environment and increase awareness of ways to protect and enhance it. Illustrative examples: <ol style="list-style-type: none"> <li>1. Engagement to raise awareness of the benefits of the environmental opportunities identified.</li> <li>2. Co-design/creation. Working collaboratively to devise and deliver solutions to support environmental objectives.</li> <li>3. Training and education. Influencing behaviour to reduce waste and use resources more efficiently in the performance of the contract.</li> <li>4. Partnering/collaborating in engaging with the community in relation to the performance of the contract, to support environmental objectives.</li> <li>5. Volunteering opportunities for the contract workforce, e.g. undertaking activities that encourage direct positive impact.</li> </ol> </li> </ul>		

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Theme 5	Wellbeing	Policy Outcome	Improve health and wellbeing
Model Award Criteria (MAC) 7.1	Model Award Sub Criteria		
Effective measures to deliver any/all of the following benefits through the contract: Influence staff, suppliers, customers and communities through the delivery of the contract to support environmental protection and improvement.	<p><b>Sub-criteria for MAC 7.1: Support health and wellbeing in the workforce</b></p> <p>Activities that demonstrate and describe the tenderer's existing or planned:</p> <ul style="list-style-type: none"> <li>• Understanding of issues relating to health and wellbeing, including physical and mental health, in the contract workforce.</li> <li>• Inclusive and accessible recruitment practices, development practices and retention-focussed activities including those provided in the Guide for line managers on recruiting, managing and developing people with a disability or health condition.</li> <li>• Actions to invest in the physical and mental health and wellbeing of the contract workforce.</li> </ul> <p><b>Illustrative examples:</b></p> <ol style="list-style-type: none"> <li>1. implementing the 6 standards in the Mental Health at Work commitment and, where appropriate, the mental health enhanced standards for companies with more than 500 employees in Thriving at Work with respect to the contract workforce, not just 'following the recommendations'.</li> <li>2. public reporting by the tenderer and its supply chain on the health and wellbeing of staff comprising the contract workforce, following the recommendations in the Voluntary Reporting Framework.</li> <li>3. engagement plans to engage the contract workforce in deciding the most important issues to address.</li> </ol> <ul style="list-style-type: none"> <li>• Methods to measure staff engagement over time and adapt to any changes in the results.</li> <li>• Processes for acting on issues identified.</li> </ul>		

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Theme 5	Wellbeing	Policy Outcome	Improve health and wellbeing
Model Award Criteria (MAC) 7.2	Model Award Sub Criteria		
Effective measures to deliver any/all of the following benefits through the contract: Influence staff, suppliers, customers and communities through the delivery of the contract to support health and wellbeing, including physical and mental health.	<b>Sub-criteria for MAC 7.2: Influencing support for health and wellbeing</b>  Activities that demonstrate and describe the tenderer's existing or planned: <ul style="list-style-type: none"> <li>Measures to raise awareness or increase the influence of staff, suppliers, customers, communities and/or any other appropriate stakeholders to promote health and wellbeing, including physical and mental health, through its performance of the contract, e.g. through engagement; co-design/creation; training and education; partnering/collaborating; and volunteering.</li> </ul>		

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Theme 5	Wellbeing	Policy Outcome	Improve community integration
Model Award Criteria (MAC) 8.1	Model Award Sub Criteria		
Effective measures to deliver any/all of the following benefits through the contract: Demonstrate collaboration with users and communities in the co-design and delivery of the contract to support strong integrated communities.	<p><b>Sub-criteria for MAC 8.1: Collaborate in codesign and delivery</b></p> <p>Activities that demonstrate and describe the tenderer's existing or planned:</p> <ul style="list-style-type: none"> <li>• Understanding of local demographics, needs and opportunities for the co-design of the goods, services and works to be delivered under the contract.</li> <li>• Methods for engaging with different parts of the community (including the education system) and how communities come together to inform decisions, strategy and projects to leave a positive legacy for future generations.</li> </ul> <p><b>Illustrative examples:</b> engagement events; awareness campaigns and outreach activities; focus groups; 'anchor institutions' such as educational establishments and health trusts; Local Economic Partnerships (LEPs); charities; industry or community representative bodies.</p> <ul style="list-style-type: none"> <li>• Measures to involve local stakeholders and/or users in design (e.g. in the design of services, systems, products or buildings).</li> <li>• Plans for positive actions with community groups.</li> <li>• Measures for making facilities used in the delivery of the contract available for community groups, education or training.</li> <li>• Measures to build trust, gain credibility and build relationships to increase community integration, trust and influence on how the contract is performed.</li> <li>• Flexibility in responsiveness and ability to adapt in approach to community engagement and initiatives.</li> <li>• Support to community-led initiatives relevant to the contract.</li> </ul>		

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Theme 5	Wellbeing	Policy Outcome	Improve community integration
Model Award Criteria (MAC) 8.1	Model Award Sub Criteria		
	<p><b>Illustrative examples:</b> improving transport links; reducing crime; reducing homelessness, poverty and hunger; reducing loneliness; helping with English language proficiency; and helping meaningful social mixing among people with different backgrounds.</p> <ul style="list-style-type: none"> <li>Employee volunteering schemes applicable to the contract workforce.</li> </ul>		

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Theme 5	Wellbeing	Policy Outcome	Improve community integration
Model Award Criteria (MAC) 8.2	Model Award Sub Criteria		
Effective measures to deliver any/all of the following benefits through the contract: Influence staff, suppliers, customers and communities through the delivery of the contract to support strong, integrated communities	<p><b>Sub-Criteria for MAC 8.2: Influence to support strong, integrated communities</b></p> <p>Activities that demonstrate and describe the tenderer's existing or planned:</p> <ul style="list-style-type: none"> <li>Measures to raise awareness or increase the influence of staff, suppliers, customers, communities and/or any other appropriate stakeholders to promote strong, integrated communities through its performance of the contract, e.g. through engagement; co-design/creation; training and education; partnering/collaborating; and volunteering</li> </ul>		

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## Section E – Instructions on Submitting Tenders

### Submission of your Tender

#### Electronic Tender Submission

- E1. Your Tender and any ITT Documentation must be submitted electronically via the Defence Sourcing Portal (DSP) by 14 February 12:00 (UK Time). The Authority reserves the right to reject any Tender received after the stated date and time. Hard copy, paper or delivered digital Tenders (e.g. email, DVD) at OFFICIAL SENSITIVE classification are no longer required and will not be accepted by the Authority. Tenderers are required to submit an electronic online Tender response to ITT 700879368.
- E2. You must provide via the DSP one priced copy of your Tender and one unpriced copy. Both copies should be clearly labelled and easily identifiable. You must ensure that there are no prices present in your unpriced copy. The Authority has the right to request, at its discretion, that any pricing information found in the unpriced copy is redacted in accordance with paragraph E3.
- E3. The Authority may, in its own absolute discretion allow the Tenderer to rectify any irregularities identified in the Tender by the Authority or provide clarification after the Tender return date. For example, this may include, but is not limited to, redacting pricing information in the unpriced copy of the tender, rectifying, or providing clarification in relation to a corrupt or blank document. Tenderers will be provided with instructions via the DSP on how they can correct such irregularities which must be completed by the deadline set. The Authority will cross reference the amended Tender with the original Tender submitted to the DSP before the Tender return date to ensure that no other amendments, other than in relation to the specific irregularity/clarification communicated by the Authority, have been made. Should Tenderers make additional amendments to the Tender other than those relating to the specific irregularity/clarification communicated to the Tenderer by the Authority, this will result in a non-compliant bid.
- E4. The DSP is accredited to OFFICIAL SENSITIVE. Material that is protectively marked above this classification must not be uploaded to the DSP. Please contact Josiah.Mayled100@mod.gov.uk if you have a requirement to submit documents above OFFICIAL SENSITIVE
- E5. You must not upload any ITAR or Export Controlled information as part of your Tender or ITT documentation into the DSP. You must contact josiah.mayled100@mod.gov.uk to discuss any exchange of ITAR or Export Controlled information. You must ensure that you have the relevant permissions to transfer information to the Authority.
- E6. You must ensure that your DEFFORM 47 Annex A is signed, scanned and uploaded to DSP with your Tender as a PDF (it must be a scanned original). The remainder of your Tender must be compatible with MS Word and other MS Office applications.

## Lots

- E7. This requirement has been split into lots. Further details can be found at Annex A to Section E to DEFFORM 47.

## Variant Bids

- E8. The Authority will not accept variant bids.

## Samples

- E9. Sample products are required to be delivered for trial evaluation by 7<sup>th</sup> January 2022. You should clearly label the trial products with the following particulars

- a. your name and address;
- b. the Tender Reference Number and due date for return of the Tender; and
- c. the Description and Item Number as shown in the Schedule of Requirements.

Samples should be sent to the following delivery address:

Nick Withers  
Credenhill  
Hereford  
HR4 7DD

## File naming convention

- E10. The file name of the document to be uploaded must remain the same as the document issued as part of the tender documentation. However, please add to the very start of the file name, the initials of your company.

Company Name	Company Initials to use on File Names
Beechwood Equipment Ltd	BEL
Viking Arms	VAL
Ian Edgar (Liverpool) Ltd trading as: Edgar Brothers	IEL

### Example:



Tender Document Issued:

File Name: 010-700879368\_DEFFORM\_47\_Section\_D\_Annex A\_ITEAP\_1.2(Requires Updating)

Tender Document to be Uploaded:

File Name: **BEL-010-700879368\_DEFFORM\_47\_Section\_D\_Annex A\_ITEAP\_1.2(Requires Updating)**

E11. Where evidence is required to be provided as required in Annexes B,C and D of Section D to DEFFORM 47, A separate file containing the evidence must be uploaded. The tenderer can either upload a separate evidence file for each SR or one evidence file for each Annex.

a. Where one evidence file is loaded for each SR, the file should be labelled as follows: -

Company Initials-SR-Number-Evidence-ITT Number\_ITT Document

Example:

**BEL-SR-08-Evidence-700879368\_DEFFORM47\_Section\_D\_Annex\_B**

**BEL-SR-09-Evidence-700879368\_DEFFORM47\_Section\_D\_Annex\_B**

**BEL-SR-10-Evidence-700879368\_DEFFORM47\_Section\_D\_Annex\_B**

**BEL-SR-11-Evidence-700879368\_DEFFORM47\_Section\_D\_Annex\_B**

Within the Annexes to Section D to DEFFORM 47 where it asks:

**“Please state the location reference and / or file name of the supporting evidence provided for this SR:”**

the tenderer would simply state the file reference as captured above.

Example:

**BEL-SR-08-Evidence-700879368\_Section\_D\_Annex\_B**

b. Where one evidence file is loaded for each Annex, the file should be labelled as follows:

Company Initials-Evidence-ITT Number\_ITT Document

Example:

**BEL-Evidence-700879368\_DEFFORM47\_Section\_D\_Annex\_B**

**BEL-Evidence-700879368\_DEFFORM47\_Section\_D\_Annex\_C**

**BEL-Evidence-700879368\_DEFFORM47\_Section\_D\_Annex\_D**

Within the single file containing the evidence for the Annex, there must be a contents page which must clearly state the SR Number and the associated page number to where the evidence of the SR can be found.

Example:

SR-08	Page 1
SR-09	Page 6
SR-10	Page 14
SR-11	Page 18

Within the Annexes to Section D to DEFFORM 47 where it asks:

**“Please state the location reference and / or file name of the supporting evidence provided for this SR:”**

the tenderer would simply state the file reference as captured above, the SR number and Page Number.

Example:

**BEL-Evidence-700879368\_Section\_D\_Annex\_B\_SR-08\_Page\_1**

**BEL-Evidence-700879368\_Section\_D\_Annex\_B\_SR-09\_Page\_6**

## Priced and Unpriced Tender Documents

E12. The following documents within the ITT contain pricing Information: -

DEFFORM 47 – Annex A – Offer  
Schedule 2 – Schedule of Requirements  
Schedule 12 – Post Design and Support  
Schedule 13 – Additional Buys  
Schedule 14 – Spares Pack

In support of paragraph E2 above, the tender must add the words “Priced” or “Unpriced” to the file name for each of the above 6 documents that contain pricing information.

Example:

**BEL-023-Priced\_700879368\_Schedule\_02\_Schedule\_of\_Requirements**

**BEL-023-Unpriced\_700879368\_Schedule\_02\_Schedule\_of\_Requirements**

## Annex A to Section E to DEFFORM 47 – Lots

1. The requirement has been divided into the following lots:

- a. Lot 1 - The Authority requires a Long-range shotgun at Technology Readiness Level 7. The system shall provide multiple effects consistently on targets at ranges from 100m, compatible with current in-service sights with a chamber of 3 inches. The system shall include ArmaLite-15 configured user interface controls with the ability to reload in 10 seconds in all operational environments with system length no longer than 41 inches.

The following Tenderers can bid for Lot 1:

- i. Beechwood Equipment
- ii. Viking Arms

- b. Lot 2 - The Authority requires a Breaching Shotgun at Technology Readiness Level 7. The system shall provide multiple effects consistently on target sets at close range, compatible with current in-service sights with a chamber of 3 inches. The system shall include ArmaLite-15 configured user interface controls with the ability to reload in 10 seconds with overall system length no longer than 26 inches.

The following Tenderers can bid for Lot 2:

- i. Beechwood Equipment
- ii. Viking Arms

- c. Lot 3 - The Authority requires a Combined Shotgun to meet the Long-range and Breaching Shotgun requirements at Technology Readiness Level 7. The system which shall provide multiple effects consistently on target sets at close range and beyond 100m, compatible with current in-service sights with a chamber of 3 inches. The system shall include ArmaLite-15 configured user interface controls with the ability to reload in 10 seconds with overall system length no longer than 26 inches.

The following Tenderers can bid for Lot 3:

- i. Edgar Brothers

2. Tenderers are invited to tender for all or any of the lots detailed above for which they are listed against.
3. Each Tender must meet the Authority's minimum requirements, operate as a standalone Tender and not be dependent upon any other Tender or any other factors external to the Tender itself, that is each Tender must be capable of being accepted by the Authority in its own right.
4. Tenderers are only permitted to tender for lots in respect of which they have successfully passed supplier selection.
5. The Authority may award separate Contracts of each or any combination.
6. There are no restrictions on the number of lots a single Tenderer can win.
7. Lot 3 tenders will be evaluated against the requirements for both Lot 1 and 2. This may result in a Lot 3 tender being successful at Lot 1, or Lot 2, or both Lots 1 and 2 if they

Official

Annex A to Section E  
to DEFFORM 47 (07/21)  
ITT Number: 700879368

achieve the highest scores in accordance with the tender evaluation detailed in Section D of the DEFFORM 47.

## Section F – Conditions of Tendering

- F1. The issue of ITT Documentation or ITT Material is not a commitment by the Authority to place a Contract as a result of this competition or at a later stage. Neither does the issue of this ITT or subsequent Tender submission create any implied Contract between the Authority and any Tenderer and any such implied Contract is expressly excluded.
- F2. The Authority reserves the right, but is not obliged to:
- a. vary the terms of this ITT in accordance with applicable law;
  - b. seek clarification or additional documents in respect of a Tenderer's submission during the Tender evaluation where necessary for the purpose of carrying out a fair evaluation. Tenderers are asked to respond to such requests promptly;
  - c. visit your site;
  - d. disqualify any Tenderer that submits a non-compliant Tender in accordance with the instructions or conditions of this ITT;
  - e. disqualify any Tenderer that is guilty of misrepresentation in relation to its Tender, expression of interest, the dynamic PQQ or the tender process;
  - f. re-assess your suitability to remain in the competition, for example where there is a material change in the information submitted in and relating to the PQQ response, see paragraphs A31 to A34;
  - g. withdraw this ITT at any time, or choose not to award any Contract as a result of this tender process, or re-invite Tenders on the same or any alternative basis;
  - h. re-issue this ITT on a single source basis, in the event that this procurement does not result in a 'competitive process' as defined in the Single Source Contract Regulations 2014, making such adjustments as would be required by the application of the Defence Reform Act 2014 and/or the Single Source Contract Regulations 2014;
  - i. choose not to award any Contract as a result of the current tender process;
  - j. where it is considered appropriate, ask for an explanation of the costs or price proposed in the Tender where the Tender appears to be abnormally low;
- F3. The Contract will be entered into when the Authority sends written notification of its entry into the Contract, via a DEFFORM 159. Written notification will be issued, to the address you provide, on or before the end of the validity period specified in paragraph C3.

## Conforming to the Law

- F4. You must comply with all applicable UK legislation and any equivalent legislation in a third state.

- F5. Your attention is drawn to legislation relating to the canvassing of a public official, collusive behaviour and bribery. If you act in breach of this legislation your Tender will be disqualified from this procurement. Disqualification will be without prejudice to any civil remedy available to the Authority or any criminal liability that your conduct may attract.

## Bid Rigging and Other Illegal Practices

- F6. You must report any suspected or actual bid rigging, fraud, bribery, corruption, or any other dishonest irregularity in connection to this tendering exercise to:

Defence Regulatory Reporting Cell Hotline

0800 161 3665 (UK) or

+44 1371 85 4881 (Overseas)

## Conflicts of Interest

- F7. Any attempt by Tenderers or their advisors to influence the contract award process in any way may result in the Tenderer being disqualified. Specifically, Tenderers shall not directly or indirectly at any time:
- devise or amend the content of their Tender in accordance with any agreement or arrangement with any other person, other than in good faith with a person who is a proposed partner, supplier, consortium member or provider of finance;
  - enter into any agreement or arrangement with any other person as to the form or content of any other Tender, or offer to pay any sum of money or valuable consideration to any person to effect changes to the form or content of any other Tender;
  - enter into any agreement or arrangement with any other person that has the effect of prohibiting or excluding that person from submitting a Tender;
  - canvass the Authority or any employees or agents of the Authority in relation to this procurement; or
  - attempt to obtain information from any of the employees or agents of the Authority or their advisors concerning another Tenderer or Tender
- F8. Where you have advised the Authority in relation to this procurement procedure or otherwise have been or are involved in any way in the preparation or conduct of this procurement procedure or where any other actual or potential conflict of interest (COI) exists or arises at any point before the Contract award decision, you must notify the Authority immediately.
- F9. Where an actual or potential COI exists or arises, you must provide a proposed Compliance Regime within seven (7) calendar days of notifying the Authority of the actual or potential COI. The proposal must be of a standard which, in the Authority's sole opinion, appropriately manages the conflict, provides sufficient separation to prevent distortion of competition and provides full details listed in F9 a to g below. Where the Contract is awarded and the COI is still relevant post-Contract award decision, your proposed Compliance Regime will become part of the Contract Terms and Conditions. As a minimum, the Compliance Regime must include:

- a. the manner of operation and management;
  - b. roles and responsibilities;
  - c. standards for integrity and fair dealing;
  - d. levels of access to and protection of competitors' sensitive information and Government Furnished Information;
  - e. confidentiality and/or non-disclosure agreements (e.g. DEFFORM 702);
  - f. the Authority's rights of audit; and
  - g. physical and managerial separation.
- F10. Tenderers are ultimately responsible for ensuring that no COI exist between the Tenderer and its advisers, and the Authority and its advisers. Any Tenderer who fails to comply with this requirement (including where the Authority does not deem the proposed Compliance Regime to be of a standard which appropriately manages the conflict) may be disqualified from the procurement at the discretion of the Authority.

## Government Furnished Assets

- F11. Where the Authority provides Government Furnished Assets (GFA) in support of this competition, you must include details of the GFA in your Public Store Account and treat it in accordance with Def Stan 05-099. If unsuccessful in this competition, you must seek instructions for the GFA from the named Commercial Officer

## Standstill Period

- F12. The Authority is allowing a space of ten (10) calendar days between the date of dispatch of the electronic notice of its decision to award a Contract to the successful Tenderer before entering into a Contract, known as the standstill period. The standstill period ends at 23:59 on the 10th day after the date the DEFFORM 158s are sent. If the 10th day is not a business day, the standstill period ends at 23:59 of the next business day.

## Publicity Announcement

- F13. If you wish to make an announcement regarding this procurement, you must seek approval from the named Commercial Officer and Press Office and such permission will only be given at the sole discretion of the Authority. Requests must be made in writing to the named Commercial Officer and a copy of the draft announcement provided. This shall then be forwarded to the Press Office and their contact details will be provided for further follow up.
- F14. Under no circumstances should you confirm to any Third Party the Authority's Contract award decision before the Authority's announcement of the award of Contract.

## Sensitive Information

- F15. All Central Government Departments and their Executive Agencies and Non-Departmental Public Bodies are subject to control and reporting within Government. In particular, they

report to the Cabinet Office and HM Treasury for all expenditure. Further, the Cabinet Office has a cross-governmental role delivering overall Government policy on public procurement, including ensuring value for money, related aspects of good procurement practice and answering Freedom of Information requests.

- F16. For these purposes, the Authority may share within Government any of the Tenderers documentation/information (including any that the Tenderer considers to be confidential and/or commercially sensitive such as specific bid information) submitted by the Tenderer to the Authority during this procurement. Tenderers taking part in this competition must identify any sensitive material in the DEFFORM 539A (or SC1B Schedule 4 or SC2 Schedule 5) and consent to these terms as part of the competition process. This allows the Authority to share information with other Government Departments while complying with our obligations to maintain confidentiality.
- F17. Where required, the Authority will disclose on a confidential basis any information it receives from Tenderers during the tender process (including information identified by the Tenderer as Commercially Sensitive Information in accordance with the provisions of this ITT) to any Third Party engaged by the Authority for the specific purpose of evaluating or assisting the Authority in the evaluation of the Tenderer's Tender. In providing such information the Tenderer consents to such disclosure.

## Reportable Requirements

- F18. Listed in the DEFFORM 47 Annex A (Offer) are the Mandatory Declarations. It is a Condition of Tendering that you complete and attach the returns listed in the Annex and, where you select yes, you must attach the relevant information with the tender submission.
- F19. Your Tender will be deemed non-compliant and excluded from the tender process if you fail to complete the Annex in full and attach relevant information where required.

## Specific Conditions of Tendering

- F20. The Supplier Cyber Protection Service Tool is not currently available. Details for an interim process are detailed as follows until a new tool is developed. Additionally the interim process is detailed at the following website: <https://www.gov.uk/guidance/defence-cyber-protection-partnership>.
- F21. The Supplier Assurance Questionnaire (SAQ) contained within this ITT (link at Schedule 15) must be completed by tenderers using either MS Forms (preferred) or converted to a PDF. The result and reference number will be provided to tenderers by the Defence Cyber Protection Partnership (DCPP) team via email following completion of the MS Form or PDF. Please note, tenderers should allow a minimum of two (2) working days for the DCPP team to respond with the SAQ result. The completed SAQ and result must still be included by tenderers with their tender responses, along with a Cyber Implementation Plan if applicable.
- F22. DEFCON 658 requires the contractor to flow down the RA/SAQ process for any sub-contracts; for all contracts where sub-contracts have not yet been placed, this contractual obligation will be paused except those where the RA results in a 'High' Cyber Risk Profile. All other levels must be completed during a grace period after the new tool goes live.



- F23. DEFCON 658 requires the contractor to renew the SAQ annually; this contractual obligation will be paused for all contracts containing DEFCON 658. Tenderers should read, sign and return as part of their tender response, the Cyber Risk Profile letter '030-700879368\_DEFFORM\_47\_Section\_F\_Annex\_A\_Cyber\_Security\_Letter' contained within this ITT.

DRAFT

Nicholas Harris,  
DE&S Land Equipment Operating Centre,  
Soldier Training & Special Projects Dismounted Close Combat,  
MOD Abbey Wood,  
Cedar 2A #3260,  
Bristol,  
BS34 8JH.  
[Nicholas.Harris841@mod.gov.uk](mailto:Nicholas.Harris841@mod.gov.uk)

Contractor's representative,  
Contractor's address for provision of notices,  
Contact details.]

20 December 2021

**ITT REFERENCE: 700879368 Procurement of Breaching Shotgun**  
**CYBER RISK PROFILE FOR ABOVE ITT: VERY LOW**

We refer to the above-mentioned ITT.

Please note that, for all contracts and relevant Sub-contracts which are assessed to have a Cyber Risk Profile of HIGH, clause 3.1.3 of DEFCON 658 is suspended until further notice but you must otherwise continue to comply fully with DEFCON 658 Edn 09/21. As part of this process, you must complete the Risk Assessment and Supplier Assurance Questionnaire using the interim process described in ISN 2021-05 and you must continue the flow down throughout the supply chain until the Cyber Risk Profile is no longer assessed to be HIGH.

With effect from 4 June 2021, for all contracts which are assessed to have a Cyber Risk Profile lower than HIGH (i.e. MODERATE, LOW or VERY LOW), the MOD confirms that the following clauses of DEFCON 658 shall operate as set out below until further notice by ISN and letter:

**Clauses 3.1.1 and 3.1.2:**

These clauses shall remain in effect for **all** MOD awarded contracts but, where a MOD awarded contract has a Cyber Risk Profile below HIGH and/or where a Sub-contract has a Cyber Risk Profile below HIGH, this clause is suspended for all relevant lower tier Sub-contracts which are awarded on or after 4 June 2021. Please see the diagrams attached at Annex A to this letter which are provided for illustrative purposes.

**Clause 3.1.3:**

This clause is suspended for all contracts and Sub-contracts which are due to re-complete the CSM Supplier Assurance Questionnaire between 4 June 2021 and the end of the interim process.

**General:**

For the avoidance of doubt please note that:

1. All other provisions of DEFCON 658 will continue to apply;
2. In accordance with clause 3.1.9, DEFCON 658 should continue to be included in all relevant Sub-contracts. Strictly to the limited extent outlined above and in relation to Sub-contracts assessed to have a Cyber Risk Profile below HIGH, MOD is content for contractors to offer their Sub-contractors a suspension of the equivalent provisions to 3.1.1, 3.1.2 and 3.1.3 until the full Supplier Cyber Protection Service is available again;
3. For Sub-contracts where the prime contract with MOD has been assessed to have a Cyber Risk Profile of MODERATE, LOW or VERY LOW, it is a matter for you to determine how best to ensure that cyber risk is appropriately managed until the full Supplier Cyber Protection Service is available again. However, contractors are expected to act reasonably and proportionately in relation to relevant Sub-contracts.

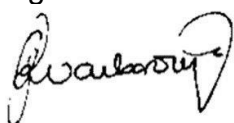
The Supplier Cyber Protection Service tool is expected to be fully operational in the Autumn of 2021 and the MOD will notify you by ISN and letter when you should recommence the use of the online tool.

At this point, MOD will also confirm the period within which:

- a. any annual renewals of CSM Supplier Assurance Questionnaires must be completed in order to be considered compliant with clause 3.1.3 of DEFCON 658; and
- b. Sub-contracts with a Cyber Risk Profile of MODERATE, LOW and VERY LOW must again comply with all of the obligations set out in clauses 3.1.1 and 3.1.2.

This period is expected to be no less than 6 weeks, although may be longer depending on the period for which the Supplier Cyber Protection Service has been offline.

Signed on behalf of the MOD



ROSEMARY SWANBOROUGH DCC SENIOR COMMERCIAL MANAGER

Please sign and date this letter below and return by post and email to the MOD Commercial Officer at the email address above to confirm receipt and acknowledge the provisions set out above.

Signed on behalf of the Contractor by .....

Date .....2021/2

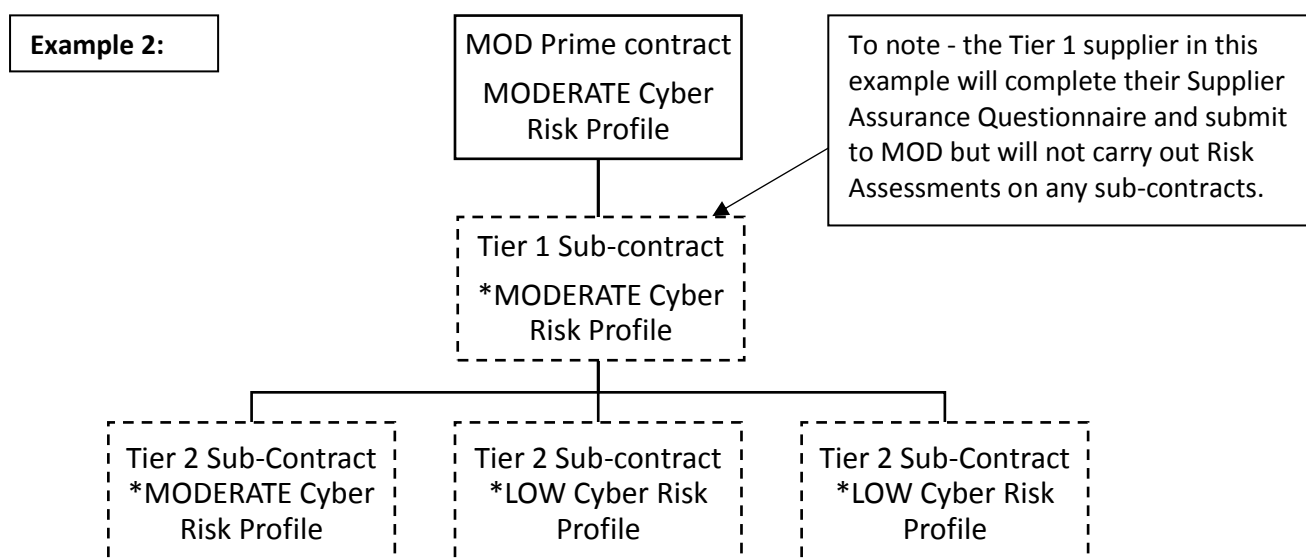
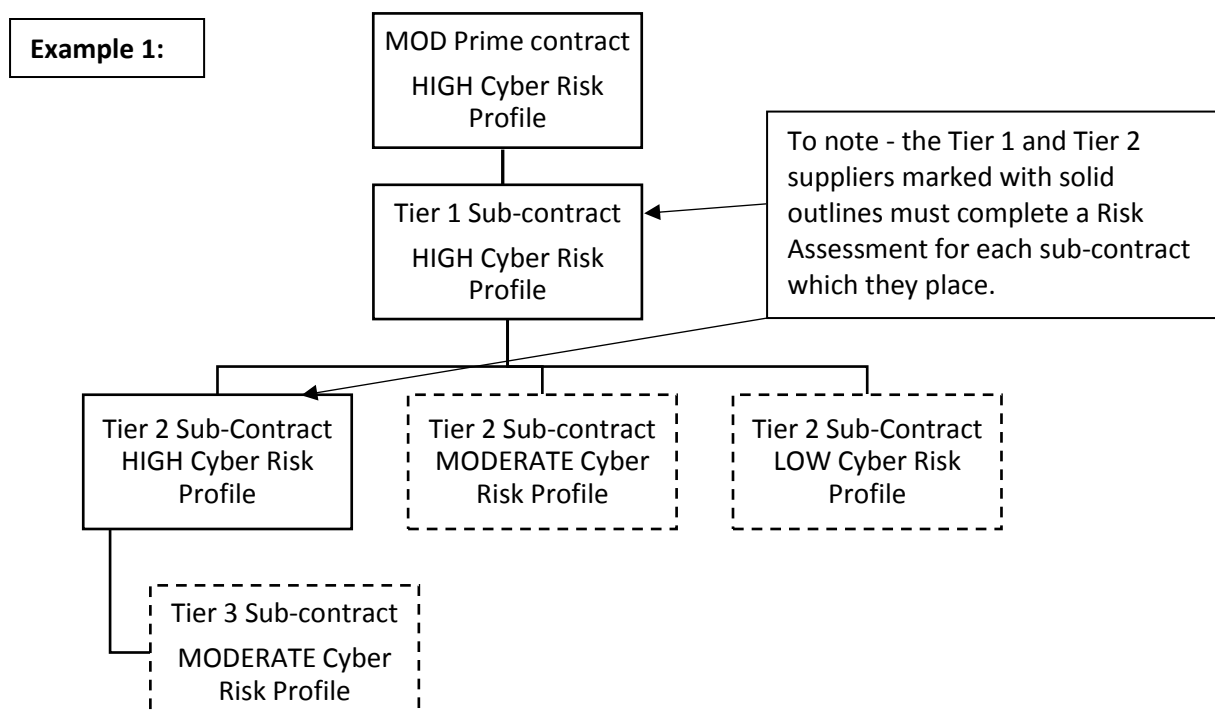


## Annex A - Illustrative Examples

In relation to contracts awarded on or after 4 June 2021, clauses 3.1.1 and 3.1.2 of DEFCON 658 continue to apply to all contracts / Sub-contracts marked with solid outlines below but are suspended for those shown with dashed outlines.

For the avoidance of doubt, Supplier Assurance Questionnaires should still be completed, using the interim process, for Sub-contracts where the sub-contractor is in receipt of a Risk Assessment from a higher tier contractor.

Boxes marked with an \* indicate lower tier Sub-contracts where the sub-contractor has not received a Risk Assessment from a higher tier contractor and will not have completed a Supplier Assurance Questionnaire during the interim cyber assurance process. They are therefore estimated to have the Cyber Risk Profile indicated for illustrative purposes only.



## Ministry of Defence

Tender Ref No. 700879368

## Tender Submission Document (Offer)

To the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland (hereafter called “the Authority”)

The undersigned Tenderer, having read the ITT Documentation and ITT Material, offers to supply the Contractor Deliverables at the stated price(s), in accordance with any referenced drawings and / or Specifications, subject to the Conditions of Tendering. It is agreed that only the Contract Terms & Conditions or any amendments issued by the Authority shall apply.

<b>Applicable Law</b>				
I agree that any contract resulting from this competition shall be subject to English Law				Yes / No*
<b>Total Value of Tender (excluding VAT)</b>				
£ .....				
WORDS .....				
<b>UK Value Added Tax</b>				
If registered for Value Added Tax purposes, please insert:				
a. Registration No .....				
b. Total amount of Value Added Tax payable on this Tender (at current rate(s)) £.....				
<b>Location of work (town / city) where contract will be performed by Prime:</b>				
Where items which are subject of your Tender are not supplied or provided by you, state location in town / city to be performed column (continue on another page if required)				
Tier 1 Sub-contractor Company Name	Town / city to be Performed	Contractor Deliverables	Estimated Value	SME Yes / No
<b>Mandatory Declarations</b> (further details are contained in Appendix 1 to DEFFORM 47 Annex A (Offer)):			<b>Tenderer's Declaration</b>	
Are the Contractor Deliverables subject to IPR that has been exclusively or part funded by Private Venture, Foreign Investment or otherwise than by Authority funding?			Yes* / No	
Are the Contractor Deliverables subject to Foreign Export Control and Security Restrictions? If the answer is Yes, please complete and attach DEFFORM 528 (Blank copy of DEFFORM 528 is attached at Schedule 20 to the Terms and Conditions to Contract 700879368)			Yes* / No	

<b>Mandatory Declarations</b> (further details are contained in Appendix 1 to DEFFORM 47 Annex A (Offer)):	<b>Tenderer's Declaration</b>
Have you obtained the foreign export approval necessary to secure IP user rights in the Contractor Deliverables for the Authority, including technical data, as determined in the Contract Terms & Conditions?	Yes* / No
Have you provided details of how you will comply with all regulations relating to the operation of the collection of custom import duties, including the proposed Customs procedure to be used and an estimate of duties to be incurred or suspended?	Yes / No
Have you completed a Supplier Assurance Questionnaire on the Supplier Cyber Protection Service?	Yes* / No / N/A
Have you completed Form 1686 for Sub-Contracts? (Blank copy of Form 1686 is attached at Appendix 2 to Annex A to DEFFORM 47)	Yes* / No
Have you completed the compliance matrix / matrices?	Yes / No / N/A
Are you a Small Medium Sized Enterprise (SME)?	Yes / No
Have you and your Sub-Contractors registered with the Prompt Payment Code with regards to SMEs?	Yes / No
Have you completed and attached Tenderer's Commercially Sensitive Information Form?	Yes* / No
If you have not previously submitted a Statement Relating to Good Standing within the last 12 months, or circumstances have changed have you attached a revised version?	Yes* / No / N/A
Do the Contractor Deliverables, or any item provided in accordance with the Terms and Conditions of the Contract contain Asbestos, as defined by the control of Asbestos Regulations 2012?	Yes* / No
Have you completed and attached a DEFFORM 68 - Hazardous Articles, Deliverables materials or substances statement? (Blank copy of DEFFORM 68 is attached at Schedule 6 to the Terms and Conditions to Contract 700879368)	Yes* / No
Do the Contractor Deliverables or any item provided in accordance with the Terms and Conditions of the Contract (including Packaging) use substances that deplete the Ozone Layer, as defined in Regulation (EC) 1005/2009, as it applies in Great Britain as retained EU law, and as it applies in Northern Ireland directly.	Yes* / No
Where you have been informed that a Bank or Parent Company Guarantee is required, will you provide one during the standstill period, before Contract award, if you are identified as the winning Tenderer? (Blank copy of DEFFORM 24 is attached at Schedule 17 to the Terms and Conditions to Contract 700879368)	Yes* / No / Not Required
Have you complied with the requirements of the Defence Safety Authority Regulatory Articles?	Not Required
Have you completed all Mandatory Requirements (as per paragraph F18) stated in this ITT?	Yes / No
*If selecting Yes to any of the above questions, please attach the information detailed in Appendix 1 to DEFFORM 47 Annex A (Offer).	

**Tenderer's Declaration of Compliance with Competition Law**

We certify that the offer made is intended to be genuinely competitive. No aspect of the price has been fixed or adjusted by any arrangement with any Third Party. Arrangement in this context includes any transaction, or agreement, private or open, or collusion, formal or informal, and whether or not legally binding. In particular:

- a. the offered price has not been divulged to any Third Party;
- b. no arrangement has been made with any Third Party that they should refrain from tendering;
- c. no arrangement with any Third Party has been made to the effect that we will refrain from bidding on a future occasion;
- d. no discussion with any Third Party has taken place concerning the details of either's proposed price; and
- e. no arrangement has been made with any Third Party otherwise to limit genuine competition.

We understand that any instances of illegal cartels or market sharing arrangements, or other anti-competitive practices, suspected by the Authority will be referred to the Competition and Markets Authority for investigation and may be subject to action under the Competition Act 1998 and the Enterprise Act 2002.

We understand that any misrepresentations may also be the subject of criminal investigation or used as the basis for civil action.

We agree that the Authority may share the Contractor's information / documentation (submitted to the Authority during this Procurement) more widely within Government for the purpose of ensuring effective cross-Government tender processes, including value for money and related purposes. We certify that we have identified any sensitive material in the Tenderer's Commercially Sensitive Information Form (DEFFORM 539A).

**Dated this.....day of ..... Year .....**

**Signature:**

**In the capacity of**

(Must be scanned original)

(State official position e.g. Director, Manager, Secretary etc.)

**Name:** (in BLOCK CAPITALS)

**Postal Address:**

**duly authorised to sign this Tender for and on behalf of:**

**Telephone No:**

(Tenderer's Name)

**Registered Company Number:**

**Dunn And Bradstreet number:**



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## Information on Mandatory Declarations

### IPR Restrictions

1. Where the Contractor Deliverables are subject to IPR that has been exclusively or part funded by Private Venture, Foreign Investment or otherwise than by Authority funding you must select 'Yes' in Annex A (Are the Contractor Deliverables subject to IPR that has been exclusively or part funded by Private Venture, Foreign Investment or otherwise than by Authority funding).
2. If you have answered 'Yes' in Annex A (Offer) as directed by paragraph 3 below, you must provide details in your Tender of any Contractor Deliverable which will be, or is likely to be, subject to any IPR restrictions or any other restriction on the Authority's ability to use or disclose the Contractor Deliverable, including export restrictions. In particular, you must identify:
  - a. any restriction on the provision of information to the Authority; any restriction on disclosure or the use of information by the Authority; any obligations to make payments in respect of IPR, and any Patent or Registered Design (or application for either) or other IPR (including unregistered Design Right) owned or controlled by you or a Third Party;
  - b. any allegation made against you, whether by claim or otherwise, of an infringement of Intellectual Property Rights (whether a Patent, Registered Design, unregistered Design Right, Copyright or otherwise) or of a breach of confidence, which relates to the performance of any resultant contract or subsequent use by or for the Authority of any Contractor Deliverables;
  - c. the nature of any allegation referred to under sub-paragraph 2.b., including any obligation to make payments in respect of the Intellectual Property Right of any confidential information and / or;
  - d. any action you need to take, or the Authority is required to take to deal with the consequences of any allegation referred to under sub-paragraph 2.b.
3. You must, when requested, give the Authority details of every restriction and obligation referred to in paragraph 4. The Authority will not acknowledge any such restriction unless so notified under paragraph 4 or as otherwise agreed under any resultant Contract. You must also provide, on request, any information required for authorisation to be given under Section 2 of the Defence Contracts Act 1958.
4. If you have previously provided information under paragraphs 2 and 3 you can provide details of the previous notification, updated as necessary to confirm their validity.

## Notification of Foreign Export Control Restrictions

5. If, in the performance of the Contract, you need to import into the UK or export out of the UK anything not supplied by or on behalf of the Authority and for which a UK import or export licence is required, you will be responsible for applying for the licence. The Authority will provide you with all reasonable assistance in obtaining any necessary UK import or export licence.
6. In respect of any Contractor Deliverables, likely to be required for the performance of any resultant Contract, you must provide the following information in your Tender:
  - a. Whether all or part of any Contractor Deliverables are or will be subject to:
    - i. a non-UK export licence, authorisation or exemption; or
    - ii. any other related transfer control that restricts or will restrict end use, end user, re-transfer or disclosure.

You must complete DEFFORM 528 (or other mutually agreed alternative format) in respect of any Contractor Deliverables identified at paragraph 6 and return it as part of your Tender. If you have previously provided this information you can provide details of the previous notification and confirm the validity.

7. You must use reasonable endeavours to obtain sufficient information from your potential supply chain to enable a full response to paragraph 6. If you are unable to obtain adequate information, you must state this in your Tender. If you become aware at any time during the competition that all or part of any proposed Contractor Deliverable is likely to become subject to a non-UK Government Control through a Government-to-Government sale only, you must inform the Authority immediately by updating your previously submitted DEFFORM 528 or completing a new DEFFORM 528.
8. This does not include any Intellectual Property specific restrictions mentioned in paragraph 2.
9. You must notify the named Commercial Officer immediately if you are unable for whatever reason to abide by any restriction of the type referred to in paragraph 6.
10. Should you propose the supply of Contractor Deliverables of US origin the export of which from the USA is subject to control under the US International Traffic in Arms Regulations (ITAR), you must include details on the DEFFORM 528. This will allow the Authority to make a decision whether the export can or cannot be made under the US-UK Defense Trade Co-operation Treaty. The Authority shall then convey its decision to the Tenderer. If the Authority decides that use of the Treaty for the export is permissible, it is your responsibility to make a final decision whether you want to use that route for the export concerned if you are awarded the Contract.

## Import Duty

11. United Kingdom (UK) legislation permits the use of various procedures to suspend customs duties.
12. For the purpose of this competition, for any deliverables not yet imported into the UK, you are required to provide details of your plans to address customs compliance, including the Customs procedures to be applied (together with the procedure code) and the estimated Import Duty to be incurred and/or suspended.
13. You should note that it is your responsibility to ensure compliance with all regulations relating to the operation of the accounting for import duties. This includes but is not limited to obtaining the appropriate Her Majesty's Revenue & Customs (HMRC) authorisations.

## Cyber Risk

14. Cyber risk has been considered and in accordance with the Cyber Security Model resulted in a Cyber Risk Profile of "Low Risk". The Risk Assessment References are:

**RAR-A5YEFFFY – Lot 1**

**RAR-ADNK8XUP – Lot 2**

**RAR-FTK3J5BG – Lot 3**

Tenderers are required to complete the Suppliers Assurance Questionnaire on the Supplier Cyber Protection Service and submit this as part of their Tender response, together with a Cyber Security Implementation Plan as appropriate

## Sub-contracts Form 1686

15. [Form 1686](#) (also known as Appendix 5) is to be used in all circumstances where contractors wish to place a Sub-Contract at OFFICIAL-SENSITIVE with a contractor outside of the UK, or where the release of SECRET or above information is involved within the UK or overseas. The process will require submission of the single page document either directly to the MOD Project Team or, where specified, to the DE&S Security Advice Centre. You can find further information in the [Cabinet Office - Contractual Process](#)

## Small and Medium Enterprises

16. The Authority is committed to supporting the Government's Small and Medium-sized Enterprise (SME) policy, and we want to encourage wider SME participation throughout our supply chain. Our goal is that 25% of the Authority's spending should be spent with SMEs by 2022; this applies to the money which the Authority spends directly with SMEs and through the supply chain. The Authority uses the European Commission definition of SME.
17. A key aspect of the Government's SME Policy is ensuring that its suppliers throughout the supply chain are paid promptly. All suppliers to the Authority and their Sub-Contractors are encouraged to make their own commitment and register with the [Prompt Payment Code](#).

18. Suppliers are also encouraged to work with the Authority to support the Authority's SME initiative, however this is not a condition of working with the Authority now or in the future, nor will this issue form any part of the Tender evaluation. Information on the Authority's purchasing arrangements, our commercial policies and our SME Action Plan can be found at [Gov.UK](https://www.gov.uk) and the DSP.
19. The opportunity also exists for Tenderers to advertise any Sub-Contract valued at over £10,000 on the Defence Sourcing Portal and further details can be obtained directly from: <https://www.gov.uk/guidance/subcontract-advertising>. This process is managed by the Strategic Supplier Management team who can be contacted at: DefComrcISSM-Suppliers@mod.gov.uk.

## Transparency, Freedom of Information and Environmental Information Regulations

20. The Authority shall publish notification of the Contract and publish Contract documents where required following a request under the FOI Act except where publishing such information would hinder law enforcement; would otherwise be contrary to the public interest; would prejudice the legitimate commercial interest of any person or might prejudice fair competition between suppliers
21. The Authority may publish the contents of any resultant Contract in line with government policy set out in the Prime Minister's letter of May 2010 ([Government Transparency and Accountability](#)) and in accordance with the provisions of SC2 Conditions of Contract Clause 13.
22. Before publishing the contract, the Authority will redact any information which is exempt from disclosure under the Freedom of Information Act 2000 ("the FOIA") or the Environmental Information Regulations 2004 ("the EIR").
23. You should complete the attached Tenderer's Commercially Sensitive Information Form (DEFFORM 539A or SC1B Schedule 4 or SC2 Schedule 5) explaining which parts of your Tender you consider to be commercially sensitive. This includes providing a named individual who can be contacted with regard to FOIA and EIR.
24. You should note that while your views will be taken into consideration, the ultimate decision whether to publish or disclose information lies with the Authority. You are advised to provide as much detail as possible on the form. It is highly unlikely that a Tender will be exempt from disclosure in its entirety. Should the Authority decide to publish or disclose information against your wishes, you will be given prior notification.

## Electronic Purchasing

25. Tenderers must note that use of the [Contracting, Purchasing and Finance \(CP&F\)](#) electronic procurement tool is a mandatory requirement for any resultant Contract awarded following this Tender. By submitting this Tender, you agree to electronic payment. You may consult the service provider on connectivity options. Failure to accept electronic payment will result in your Tender being non-compliant and excluded from the tender process.

## Change of Circumstances

26. In accordance with paragraph A31, if your circumstances have changed, please select 'Yes' to the appropriate question on DEFFORM 47 Annex A and submit a Statement Relating to Good Standing with your Tender.

## Asbestos, Hazardous Items and Depletion of the Ozone Layer

27. The Authority is required to report any items that use asbestos, that are hazardous or where there is an impact on the Ozone. Where any Contractor Deliverables fall into one of these categories select 'Yes' to the appropriate question on DEFFORM 47 Annex A and provide further details in your Tender.

## Defence Safety Authority (DSA) Requirements

28. There are no DSA Requirements.

## Bank or Parent Company Guarantee

29. You will be informed whether you are required to provide a Bank or Parent Company Guarantee. In the event that you are selected as the winning Tenderer, you must provide your Bank or Parent Company Guarantee (in the form of DEFFORM 24/24A as appropriate) during the standstill period. No Contract will be awarded until a suitable Bank or Parent Company Guarantee, as appropriate, is in place. Failure to provide a Bank or Parent Company Guarantee during the standstill period, will result in you being de-selected as the winning Tenderer. The Authority reserves the right to re-evaluate the Tenders, (if necessary) to take into account the absence of the de-selected Tenderer, enabling the Authority to establish the next winning Tenderer and award a Contract.

Request:

1	From: full name and address of contractor submitting application  Telephone no: _____ Email: _____
2	Full name and address of selected overseas sub-contractor where work will be undertaken
3	Maximum level of classified material to be released to or produced by the sub-contractor:
4	Description of work to be carried out:
5	Name of Project/Reference Number of prime contract:
6	Full name of point of contact and address of United Kingdom Contracting Authority:  Telephone no: _____ Email: _____

Name: \_\_\_\_\_ Position in company \_\_\_\_\_

Signature: ..... Date:

### Response from Contracting Authority:

Approval is / is not granted<sup>8</sup> to place the sub-contract detailed above. Further information is attached.<sup>9</sup>

Name: \_\_\_\_\_ Position/Title: \_\_\_\_\_

Signature: ..... Date:

Contracting Authority Organisation:

In accordance with data protection legislation, the requesting Government authority will collect, use, protect and retain the information in this form in connection with all matters relating to our personnel administration and policies.

<sup>5</sup> For sub-contracts with UK contractors on work requiring List X clearance to be initiated complete Annex A only

<sup>6</sup> For sub-contracts/collaboration with an overseas contractor involving the release of OFFICIAL-SENSITIVE or above information complete and submit 1<sup>st</sup> page only.

<sup>7</sup> For the MOD this requirement also applies to Reportable OFFICIAL information

<sup>8</sup> Delete as appropriate

<sup>9</sup> Delete if not applicable



**APPLICATION BY A UK LIST X CONTRACTOR FOR  
APPROVAL TO SUB-CONTRACT OR COLLABORATE WITH A  
UK CONTRACTOR ON WORK CLASSIFIED SECRET AND  
ABOVE  
(ALSO KNOWN AS F1686)**

A	From: full name and address of UK List X contractor submitting application  Telephone no:                      Email:
B	Full name and address of selected UK sub- contractor
C	Full name and address of selected manufacturer (if different from B)
D	Registration no. of the company & VAT no.: Reg No: VAT No:
E	Names under which the company has previously traded (if applicable):



**Ministry  
of Defence**

## **Dismounted Close Combat Team**

**Contract No: 700879368**

# **For: The Procurement of Breaching Shotgun – Project Vanisher**

<p><b>Between the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland</b></p> <p><b>Team Name and address:</b> DCC Team, LEOC, STSP, MOD Abbey Wood, #3260, Cedar 2A, Bristol. BS34 8JH</p> <p><b>E-mail Address:</b> <a href="mailto:Nicholas.Harris841@mod.gov.uk">Nicholas.Harris841@mod.gov.uk</a></p> <p><b>Telephone Number:</b> +443067987202</p> <p><b>Facsimile Number:</b></p>	<p><b>And</b></p> <p><b>Contractor Name and address:</b></p> <p><b>E-mail Address:</b></p> <p><b>Telephone Number:</b></p> <p><b>Facsimile Number:</b></p>
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## **General Conditions**

### **1. General**

- a. The defined terms in the Contract shall be as set out in Schedule 1.
- b. The Contractor shall comply with all applicable Legislation, whether specifically referenced in this Contract or not.
- c. The Contractor warrants and represents, that:
  - (1) they have the full capacity and authority to enter into, and to exercise their rights and perform their obligations under, the Contract;
  - (2) from the Effective Date of Contract and for so long as the Contract remains in force it shall give the Authority Notice of any litigation, arbitration (unless expressly prohibited from doing so in accordance with the terms of the arbitration), administrative or adjudication or mediation proceedings before any court, tribunal, arbitrator, administrator or adjudicator or mediator or relevant authority against themselves or a Subcontractor which would adversely affect the Contractor's ability to perform their obligations under the Contract;
  - (3) as at the Effective Date of Contract no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, threatened) for the winding-up of the company or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;
  - (4) for so long as the Contract remains in force they shall give the Authority Notice of any proceedings or other steps that have been taken but not discharged (nor to the best of the knowledge of the Contractor, threatened) for the winding-up of the company or dissolution or for the appointment of a receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues.
- d. Unless the context otherwise requires:
  - (1) The singular includes the plural and vice versa, and the masculine includes the feminine and vice versa.
  - (2) The words "include", "includes", "including" and "included" are to be construed as if they were immediately followed by the words "without limitation", except where explicitly stated otherwise.
  - (3) The expression "person" means any individual, firm, body corporate, unincorporated association or partnership, government, state or agency of a state or joint venture.
  - (4) References to any statute, enactment, order, regulation, or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation, or instrument as amended, supplemented, replaced or consolidated by any subsequent statute, enactment, order, regulation, or instrument.
  - (5) The heading to any Contract provision shall not affect the interpretation of that provision.
  - (6) Any decision, act or thing which the Authority is required or authorised to take or do under the Contract may be taken or done only by the person (or its nominated deputy) authorised in Schedule 3 (Contract Data Sheet) to take or do that decision, act, or thing on behalf of the Authority.
  - (7) Unless excluded within the Conditions of the Contract or required by law, references to submission of documents in writing shall include electronic submission.

### **2. Duration of Contract**

This Contract comes into effect on the Effective Date of Contract and will expire automatically on the date identified in Schedule 3 (Contract Data Sheet) unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated.

### **3. Entire Agreement**

This Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes, and neither Party has relied upon, any prior negotiations, representations and undertakings, whether written or oral, except that this Condition shall not exclude liability in respect of any fraudulent misrepresentation.

### **4. Governing Law**

- a. Subject to clause 4.d, the Contract shall be considered as a contract made in England and subject to English Law.
- b. Subject to clause 4.d and Condition 39 (Dispute Resolution) and without prejudice to the dispute resolution process set out therein, each Party submits and agrees to the exclusive jurisdiction of the Courts of England to resolve, and the laws of England to govern, any actions proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.
- c. Subject to clause 4.d any dispute arising out of or in connection with the Contract shall be determined within the English jurisdiction and to the exclusion of all other jurisdictions save that other jurisdictions may apply solely for the purpose of giving effect to this Condition 4 and for the enforcement of any judgment, order or award given under English jurisdiction.
- d. If the Parties pursuant to the Contract agree that Scots Law should apply then the following amendments shall apply to the Contract:
  - (1) Clause 4.a, 4.b and 4.c shall be amended to read:
    - a. The Contract shall be considered as a contract made in Scotland and subject to Scots Law.
    - b. Subject to Condition 39 (Dispute Resolution) and without prejudice to the dispute resolution process set out therein, each Party submits and agrees to the exclusive jurisdiction of the Courts of Scotland to resolve, and the laws of Scotland to govern, any actions, proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.
    - c. Any dispute arising out of or in connection with the Contract shall be determined within the Scottish jurisdiction and to the exclusion of all other jurisdictions save that other jurisdictions may apply solely for the purpose of giving effect to this Condition 4 and for the enforcement of any judgment, order or award given under Scottish jurisdiction."
  - (2) Clause 3939.b shall be amended to read:
 

"In the event that the dispute or claim is not resolved pursuant to clause 3939.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this clause 3939.b shall be governed by the Arbitration (Scotland) Act 2010. The seat of the arbitration shall be Scotland. For the avoidance of doubt, for the purpose

of arbitration the tribunal shall have the power to make provisional awards pursuant to Rule 53 of the Scottish Arbitration Rules, as set out in Schedule 1 to the Arbitration (Scotland) Act 2010."

e. Each Party warrants to each other that entry into the Contract does not, and the performance of the Contract will not, in any way violate or conflict with any provision of law, statute, rule, regulation, judgement, writ, injunction, decree or order applicable to it. Each Party also warrants that the Contract does not conflict with or result in a breach or termination of any provision of, or constitute a default under, any mortgage, contract or other liability, charge or encumbrance upon any of its properties or other assets.

f. Each Party agrees with each other Party that the provisions of this Condition 4 shall survive any termination of the Contract for any reason whatsoever and shall remain fully enforceable as between the Parties notwithstanding such a termination.

g. Where the Contractor's place of business is not in England or Wales (or Scotland where the Parties agree pursuant to the Contract that Scots Law should apply), the Contractor irrevocably appoints the solicitors or other persons in England and Wales (or Scotland where the Parties agree pursuant to the Contract that Scots Law should apply) detailed in Schedule 3 (Contract Data Sheet) as their agents to accept on their behalf service of all process and other documents of whatever description to be served on the Contractor in connection with any litigation or arbitration within the English jurisdiction (or Scottish jurisdiction where the Parties agree pursuant to the Contract that Scots Law should apply) arising out of or relating to the Contract or any issue connected therewith.

## 5. Precedence

a. If there is any inconsistency between the different provisions of the Contract the inconsistency shall be resolved according to the following descending order of precedence:

- (1) Conditions 1 - 43 (and 44 - 0, if included in the Contract) of the Conditions of the Contract shall be given equal precedence with Schedule 1 (Definitions of Contract) and Schedule 3 (Contract Data Sheet);
- (2) Schedule 2 (Schedule of Requirements) and Schedule 8 (Acceptance Procedure);
- (3) the remaining Schedules; and
- (4) any other documents expressly referred to in the Contract.

b. If either Party becomes aware of any inconsistency within or between the documents referred to in clause 5.a such Party shall notify the other Party forthwith and the Parties will seek to resolve that inconsistency on the basis of the order of precedence set out in clause 5.a. Where the Parties fail to reach agreement, and if either Party considers the inconsistency to be material to its rights and obligations under the Contract, then the matter will be referred to the dispute resolution procedure in accordance with Condition 39 (Dispute Resolution).

## 6. Formal Amendments to the Contract

a. Except as provided in Condition 30 and subject to clause 6.c, the Contract may only be amended by the written agreement of the Parties (or their duly authorised representatives acting on their behalf). Such written agreement shall consist of:

- (1) the Authority Notice of Change under Schedule 4 (Contract Change Control Procedure) (where used);
- (2) the Authority's offer set out in a serially numbered amendment letter issued by the Authority to the Contractor; and

(3) the Contractor's unqualified acceptance of such offer as evidenced by the Contractor's duly signed DEFFORM 10B.

b. Where required by the Authority in connection with any such amendment, the Contractor shall (as so required) confirm that any existing Parent Company Guarantee is sufficiently comprehensive so as to cover and support all of the Contractor's liabilities and obligations under and in connection with the Contract (as amended by such amendment) or provide a revised Parent Company Guarantee with such DEFFORM 10B to achieve the same purposes.

c. Where the Authority wishes to amend the Contract to incorporate any work that is unpriced at the time of amendment:

- (1) if the Contract is not a Qualifying Defence Contract, the Authority shall have the right to settle with the Contractor a price for such work under the terms of DEFCON 643 (SC2) or DEFCON 127. Where DEFCON 643 (SC2) is used, the Contractor shall make all appropriate arrangements with all its Subcontractors affected by the Change or Changes in accordance with clause 5 of DEFCON 643 (SC2); or
- (2) if the Contract is a Qualifying Defence Contract, the Contract Price shall be redetermined on amendment in accordance with the Defence Reform Act 2014 and Single Source Contract Regulations 2014 (each as amended from time to time).

## Changes to the Specification

d. The Specification forms part of the Contract and all Contract Deliverables to be supplied by the Contractor under the Contract shall conform in all respects with the Specification.

e. The Contractor shall use a configuration control system to control all changes to the Specification. The configuration control system shall be compatible with ISO 9001 (latest published version) or as specified in the Contract.

## 7. Authority Representatives

a. Any reference to the Authority in respect of:

- (1) the giving of consent;
- (2) the delivering of any Notices; or
- (3) the doing of any other thing that may reasonably be undertaken by an individual acting on behalf of the Authority,

shall be deemed to be references to the Authority's Representatives in accordance with this Condition 7.

b. The Authority's Representatives detailed in Schedule 3 (Contract Data Sheet) (or their nominated deputy) shall have full authority to act on behalf of the Authority for all purposes of the Contract. Unless notified in writing before such act or instruction, the Contractor shall be entitled to treat any act of the Authority's Representatives which is authorised by the Contract as being expressly authorised by the Authority and the Contractor shall not be required to determine whether authority has in fact been given.

c. In the event of any change to the identity of the Authority's Representatives, the Authority shall provide written confirmation to the Contractor, and shall update Schedule 3 (Contract Data Sheet) in accordance with Condition 6 (Formal Amendments to the Contract).

## 8. Severability

a. If any provision of the Contract is held to be invalid, illegal or unenforceable to any extent then:

- (1) such provision shall (to the extent that it is

invalid, illegal or unenforceable) be given no effect and shall be deemed not to be included in the Contract but without invalidating any of the remaining provisions of the Contract; and

(2) the Parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision by a valid, legal and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid, illegal or unenforceable provision.

## 9. Waiver

a. No act or omission of either Party shall by itself amount to a waiver of any right or remedy unless expressly stated by that Party in writing. In particular, no reasonable delay in exercising any right or remedy shall by itself constitute a waiver of that right or remedy.

b. No waiver in respect of any right or remedy shall operate as a waiver in respect of any other right or remedy.

## 10. Assignment of Contract

Neither Party shall be entitled to assign the Contract (or any part thereof) without the prior written consent of the other Party.

## 11. Third Party Rights

Notwithstanding anything to the contrary elsewhere in the Contract, no right is granted to any person who is not a Party to the Contract to enforce any term of the Contract in its own right and the Parties to the Contract declare that they have no intention to grant any such right.

## 12. Transparency

a. Subject to clause 12.b but notwithstanding Condition 13 (Disclosure of Information), the Contractor understands that the Authority may publish the Transparency Information to the general public. The Contractor shall assist and cooperate with the Authority to enable the Authority to publish the Transparency Information.

b. Before publishing the Transparency Information to the general public in accordance with clause 12.a, the Authority shall redact any Information that would be exempt from disclosure if it was the subject of a request for Information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, and any Information which has been acknowledged by the Authority at Schedule 5 ( Contractor's Commercially Sensitive Information).

c. The Authority may consult with the Contractor before redacting any Information from the Transparency Information in accordance with clause 12.b. The Contractor acknowledges and accepts that their representations on redactions during consultation may not be determinative and that the decision whether to redact Information is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

d. For the avoidance of doubt, nothing in this Condition 12 shall affect the Contractor's rights at law.

## 13. Disclosure of Information

a. Subject to clauses 13.d, 13.e, 13.h and Condition 12 each Party:

- (1) shall treat in confidence all Information it receives from the other;
- (2) shall not disclose any of that Information to any third party without the prior written consent of the other Party, which consent shall not unreasonably be

withheld, except that the Contractor may disclose Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of the Contract;

(3) shall not use any of that Information otherwise than for the purpose of the Contract; and

(4) shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under the Contract.

b. The Contractor shall take all reasonable precautions necessary to ensure that all Information disclosed to the Contractor by or on behalf of the Authority under or in connection with the Contract:

- (1) is disclosed to their employees and Subcontractors, only to the extent necessary for the performance of the Contract; and
- (2) is treated in confidence by them and not disclosed except with the prior written consent of the Authority or used otherwise than for the purpose of performing work or having work performed for the Authority under the Contract or any subcontract.

c. The Contractor shall ensure that their employees are aware of the Contractor's arrangements for discharging the obligations at clauses 13.a and 13.b before receiving Information and shall take such steps as may be reasonably practical to enforce such arrangements.

d. Clauses 13.a and 13.b shall not apply to any Information to the extent that either Party:

- (1) exercises rights of use or disclosure granted otherwise than in consequence of, or under, the Contract;
- (2) has the right to use or disclose the Information in accordance with other Conditions of the Contract; or
- (3) can show:
  - (a) that the Information was or has become published or publicly available for use otherwise than in breach of any provision of the Contract or any other agreement between the Parties;
  - (b) that the Information was already known to it (without restrictions on disclosure or use) prior to receiving the Information under or in connection with the Contract;
  - (c) that the Information was received without restriction on further disclosure from a third party which lawfully acquired the Information without any restriction on disclosure; or
  - (d) from its records that the same Information was derived independently of that received under or in connection with the Contract;

provided that the relationship to any other Information is not revealed.

e. Neither Party shall be in breach of this Condition where it can show that any disclosure of Information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the Party making the disclosure shall ensure that the recipient of the Information is made aware of and asked to respect its confidentiality. Such disclosure shall in no way diminish the obligations of the Parties under this Condition.

f. The Authority may disclose the Information:

- (1) on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body, which shall include: disclosure to the Cabinet Office and/or HM Treasury for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes;
- (2) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting

requirement;

(3) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

(4) on a confidential basis to a professional adviser, consultant or other person engaged by any of the entities defined in Schedule 1 (including benchmarking organisations) for any purpose relating to or connected with the Contract;

(5) on a confidential basis for the purpose of the exercise of its rights under the Contract; or

(6) on a confidential basis to a proposed body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under the Contract;

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Condition.

g. Before sharing any Information in accordance with clause 13.f, the Authority may redact the Information. Any decision to redact Information made by the Authority shall be final.

h. The Authority shall not be in breach of the Contract where disclosure of Information is made solely and to the extent necessary to comply with the Freedom of Information Act 2000 (the "Act") or the Environmental Information Regulations 2004 (the "Regulations"). To the extent permitted by the time for compliance under the Act or the Regulations, the Authority shall consult the Contractor where the Authority is considering the disclosure of Information under the Act or the Regulations and, in any event, shall provide prior notification to the Contractor of any decision to disclose the Information. The Contractor acknowledges and accepts that their representations on disclosure during consultation may not be determinative and that the decision whether to disclose Information in order to comply with the Act or the Regulations is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Act or the Regulations.

i. Nothing in this Condition shall affect the Parties' obligations of confidentiality where Information is disclosed orally in confidence.

#### **14. Publicity and Communications with the Media**

The Contractor shall not and shall ensure that any employee or Subcontractor shall not communicate with representatives of the press, television, radio or other media on any matter concerning the Contract unless the Authority has given its prior written consent.

#### **15. Change of Control of Contractor**

a. The Contractor shall notify the Representative of the Authority at the address given in clause 15.b, as soon as practicable, in writing of any intended, planned or actual change in control of the Contractor, including any Subcontractors. The Contractor shall not be required to submit any notice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the conduct of the Contractor in the UK or other jurisdictions where the Contractor may be subject to legal sanction arising from issuing such a notice.

b. Each notice of change of control shall be taken to apply to all contracts with the Authority. Notices shall be submitted to:

Mergers & Acquisitions Section

Strategic Supplier Management Team

Spruce 3b # 1301

MOD Abbey Wood,

Bristol, BS34 8JH

and emailed to: [DefComrcISSM-MergersandAcq@mod.gov.uk](mailto:DefComrcISSM-MergersandAcq@mod.gov.uk)

c. The Representative of the Authority shall consider the notice of change of control and advise the Contractor in writing of any concerns the Authority may have. Such concerns may include but are not limited to potential threats to national security, the ability of the Authority to comply with its statutory obligations or matters covered by the declarations made by the Contractor prior to contract award.

d. The Authority may terminate the Contract by giving written notice to the Contractor within six months of the Authority being notified in accordance with clause 15.a. The Authority shall act reasonably in exercising its right of termination under this Condition.

e. If the Authority exercises its right to terminate in accordance with clause 15.d the Contractor shall be entitled to request the Authority to consider making a payment representing any commitments, liabilities or expenditure incurred by the Contractor in connection with the Contract up to the point of termination. Such commitments, liabilities or expenditure shall be reasonably and properly chargeable by the Contractor, and shall otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract. Any payment under this clause 15.e must be fully supported by documentary evidence. The decision whether to make such a payment shall be at the Authority's sole discretion.

f. Notification by the Contractor of any intended, planned or actual change of control shall not prejudice the existing rights of the Authority or the Contractor under the Contract nor create or imply any rights of either the Contractor or the Authority additional to the Authority's rights set out in this Condition.

#### **16. Environmental Requirements**

The Contractor shall in all their operations to perform the Contract, adopt a sound proactive environmental approach that identifies, considers, and where possible, mitigates the environmental impacts of their supply chain. The Contractor shall provide evidence of so doing to the Authority on demand.

#### **17. Contractor's Records**

a. The Contractor and their Subcontractors shall maintain all records specified in and connected with the Contract (expressly or otherwise) and make them available to the Authority when requested on reasonable notice.

b. The Contractor and their Subcontractors shall also permit access to relevant records that relate to the contractual obligations to supply goods or services under the Contract, held by or controlled by them and reasonably required by the Comptroller and Auditor General, their staff and any appointed representative of the National Audit Office, and provide such explanations and information as reasonably necessary for the following purposes:

(1) to enable the National Audit Office to carry out the Authority's statutory audits and to examine and/or certify the Authority's annual and interim report and accounts; and

(2) to enable the National Audit Office to carry out an examination pursuant to Part II of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.

c. With regard to the records made available to the Authority under clause 17.a of this Condition, and subject to



the provisions of clause 13, the Contractor shall permit records to be examined and if necessary copied, by the Authority, or Representative of the Authority, as the Authority may require.

d. Unless the Contract specifies otherwise the records referred to in this Condition shall be retained for a period of at least 6 years from:

- (1) the end of the Contract term;
- (2) the termination of the Contract; or
- (3) the final payment,

whichever occurs latest.

## 18. Notices

- a. A Notice served under the Contract shall be:
- (1) in writing in the English language;
  - (2) authenticated by signature or such other method as may be agreed between the Parties;
  - (3) sent for the attention of the other Party's Representative, and to the address set out in Schedule 3 (Contract Data Sheet);
  - (4) marked with the number of the Contract; and
  - (5) delivered by hand, prepaid post (or airmail), facsimile transmission or, if agreed in Schedule 3 (Contract Data Sheet), by electronic mail.
- b. Notices shall be deemed to have been received:
- (1) if delivered by hand, on the day of delivery if it is the recipient's Business Day and otherwise on the first Business Day of the recipient immediately following the day of delivery;
  - (2) if sent by prepaid post, on the fourth Business Day (or the tenth Business Day in the case of airmail) after the day of posting;
  - (3) if sent by facsimile or electronic means:
    - (a) if transmitted between 09:00 and 17:00 hours on a Business Day (recipient's time) on completion of receipt by the sender of verification of the transmission from the receiving instrument; or
    - (b) if transmitted at any other time, at 09:00 on the first Business Day (recipient's time) following the completion of receipt by the sender of verification of transmission from the receiving instrument.

## 19. Progress Monitoring, Meetings and Reports

- a. The Contractor shall attend progress meetings at the frequency or times (if any) specified in Schedule 3 (Contract Data Sheet) and shall ensure that their Contractor's representatives are suitably qualified to attend such meetings.
- b. The Contractor shall submit progress reports to the Authority's Representatives at the times and in the format (if any) specified in Schedule 3 (Contract Data Sheet). The reports shall detail as a minimum:
- (1) performance/Delivery of the Contractor Deliverables;
  - (2) risks and opportunities;
  - (3) any other information specified in Schedule 3 (Contract Data Sheet); and
  - (4) any other information reasonably requested by the Authority.

## Supply of Contractor Deliverables

### 20. Supply of Contractor Deliverables and Quality Assurance

a. The Contractor shall provide the Contractor Deliverables to the Authority, in accordance with the Schedule of Requirements and the Specification, and shall allocate sufficient resource to the provision of the Contractor

Deliverables to enable it to comply with this obligation.

- b. The Contractor shall:
- (1) comply with any applicable quality assurance requirements specified in Schedule 3 (Contract Data Sheet) in providing the Contractor Deliverables; and
  - (2) discharge their obligations under the Contract with all due skill, care, diligence and operating practice by appropriately experienced, qualified and trained personnel.
- c. The provisions of clause 20.b. shall survive any performance, acceptance or payment pursuant to the Contract and shall extend to any remedial services provided by the Contractor.
- d. The Contractor shall:
- (1) observe, and ensure that the Contractor's Team observe, all health and safety rules and regulations and any other security requirements that apply at any of the Authority's premises;
  - (2) notify the Authority as soon as they become aware of any health and safety hazards or issues which arise in relation to the Contractor Deliverables; and
  - (3) before the date on which the Contractor Deliverables are to start, obtain, and at all times maintain, all necessary licences and consents in relation to the Contractor Deliverables.

### 21. Marking of Contractor Deliverables

- a. Each Contractor Deliverable shall be marked in accordance with the requirements specified in Schedule 3 (Contract Data Sheet), if no such requirement is specified, the Contractor shall mark each Contractor Deliverable clearly and indelibly in accordance with the requirements of the relevant DEF-STAN 05-132 as specified in the contract or specification. In the absence of such requirements, the Contractor Deliverables shall be marked with the MOD stock reference, NATO Stock Number (NSN) or alternative reference number specified in Schedule 2 (Schedule of Requirements).
- b. Any marking method used shall not have a detrimental effect on the strength, serviceability or corrosion resistance of the Contractor Deliverables.
- c. The marking shall include any serial numbers allocated to the Contractor Deliverable.
- d. Where because of its size or nature it is not possible to mark a Contractor Deliverable with the required particulars, the required information should be included on the package or carton in which the Contractor Deliverable is packed, in accordance with Condition 22 (Packaging and Labelling (excluding Contractor Deliverables containing Munitions)).

### 22. Packaging and Labelling (excluding Contractor Deliverables containing Munitions)

- a. Packaging responsibilities are as follows:
- (1) The Contractor shall be responsible for providing Packaging which fully complies with the requirements of the Contract.
  - (2) The Authority shall indicate in the Contract the standard or level of Packaging required for each Contractor Deliverable, including the PPQ. If a standard or level of Packaging (including the PPQ) is not indicated in the Contract, the Contractor shall request such instructions from the Authority before proceeding further.
  - (3) The Contractor shall ensure all relevant information necessary for the effective performance of the Contract is made available to all Subcontractors.
  - (4) Where the Contractor or any of their Subcontractors have concerns relating to the appropriateness of the Packaging design and or MPL

prior to manufacture or supply of the Contractor Deliverables they shall use DEFFORM 129B to feedback these concerns to the Contractor or Authority, as appropriate.

b. The Contractor shall supply Commercial Packaging meeting the standards and requirements of Def Stan 81-041 (Part 1). In addition, the following requirements apply:

- (1) The Contractor shall provide Packaging which:
  - (a) will ensure that each Contractor Deliverable may be transported and delivered to the consignee named in the Contract in an undamaged and serviceable condition; and
  - (b) is labelled to enable the contents to be identified without need to breach the package; and
  - (c) is compliant with statutory requirements and this Condition.

(2) The Packaging used by the Contractor to supply identical or similar Contractor Deliverables to commercial customers or to the general public (i.e. point of sale packaging) will be acceptable, provided that it complies with the following criteria:

- (a) reference in the Contract to a PPQ means the quantity of a Contractor Deliverable to be contained in an individual package, which has been selected as being the most suitable for issue(s) to the ultimate user;
- (b) Robust Contractor Deliverables, which by their nature require minimal or no packaging for commercial deliveries, shall be regarded as "PPQ packages" and shall be marked in accordance with clauses 22.i to 22.l. References to "PPQ packages" in subsequent text shall be taken to include Robust Contractor Deliverables; and
- (c) for ease of handling, transportation and delivery, packages which contain identical Contractor Deliverables may be bulked and overpacked, in accordance with clauses 22.i to 22.k.

c. The Contractor shall ascertain whether the Contractor Deliverables being supplied are, or contain, Dangerous Goods, and shall supply the Dangerous Goods in accordance with:

- (1) The Health and Safety At Work Act 1974 (as amended);
- (2) The Classification Hazard Information and Packaging for Supply Regulations (CHIP4) 2009 (as amended);
- (3) The REACH Regulations 2007 (as amended); and
- (4) The Classification, Labelling and Packaging Regulations (CLP) 2009 (as amended).

d. The Contractor shall package the Dangerous Goods as limited quantities, excepted quantities or similar derogations, for UK or worldwide shipment by all modes of transport in accordance with the regulations relating to the Dangerous Goods and:

- (1) The Safety Of Lives At Sea Regulations (SOLAS) 1974 (as amended); and
- (2) The Air Navigation (Amendment) Order 2019.

e. As soon as possible, and in any event no later than one month before delivery is due, the Contractor shall provide a Safety Data Sheet in respect of each Dangerous Good in accordance with the REACH Regulations 2007 (as amended) and the Health and Safety At Work Act 1974 (as amended) and in accordance with Condition 23 (Supply of Hazardous Materials or Substances in Contractor Deliverables).

f. The Contractor shall comply with the requirements for the design of MLP which include clauses 22.f and 22.g as follows:

- (1) Where there is a requirement to design UK or

NATO MLP, the work shall be undertaken by an MPAS registered organisation, or one that although non-registered is able to demonstrate to the Authority that their quality systems and military package design expertise are of an equivalent standard.

(a) The MPAS certification (for individual designers) and registration (for organisations) scheme details are available from:

DES SEOC SCP-SptEng-Pkg

MOD Abbey Wood

Bristol, BS34 8JH

Tel. +44(0)30679-35353

[DESSEOCSCP-SptEng-PK@mod.uk](mailto:DESSEOCSCP-SptEng-PK@mod.uk)

(b) The MPAS Documentation is also available on the DStan website.

(2) MLP shall be designed to comply with the relevant requirements of Def Stan 81-041, and be capable of meeting the appropriate test requirements of Def Stan 81-041 (Part 3). Packaging designs shall be prepared on a SPIS, in accordance with Def Stan 81-041 (Part 4).

(3) The Contractor shall ensure a search of the SPIS index (the 'SPIN') is carried out to establish the SPIS status of each requirement (using DEFFORM 129a 'Application for Packaging Designs or their Status').

(4) New designs shall not be made where there is an existing usable SPIS, or one that may be easily modified.

(5) Where there is a usable SFS, it shall be used in place of a SPIS design unless otherwise stated by the Contract. When an SFS is used or replaces a SPIS design, the Contractor shall upload this information on to SPIN in Adobe PDF.

(6) All SPIS, new or modified (and associated documentation), shall, on completion, be uploaded by the Contractor on to SPIN. The format shall be Adobe PDF.

(7) Where it is necessary to use an existing SPIS design, the Contractor shall ensure the Packaging manufacturer is a registered organisation in accordance with clause 22.f(1) above, or if un-registered, is compliant with MPAS ANNEX A Supplement (Code) M. The Contractor shall ensure, as far as possible, that the SPIS is up to date.

(8) The documents supplied under clause 22.f(6) shall be considered as a contract data requirement and be subject to the terms of DEFCON 15 and DEFCON 21.

g. Unless otherwise stated in the Contract, one of the following procedures for the production of new or modified SPIS designs shall be applied:

(1) If the Contractor or their Subcontractor is the PDA they shall:

(a) On receipt of instructions received from the Authority's representative nominated in Box 2 Annex A to Schedule 3 (Contract Data Sheet), prepare the required package design in accordance with clause 22.f.

(b) Where the Contractor or their Subcontractor is registered, they shall, on completion of any design work, provide the Authority with the following documents electronically:

i. a list of all SPIS which have been prepared or revised against the Contract; and

ii. a copy of all new / revised SPIS, complete with all continuation sheets and associated drawings, where applicable, to be uploaded onto SPIN.

(c) Where the PDA is not a registered organisation, then they shall obtain approval

for their design from a registered organisation before proceeding, then follow clause 22.g(1)(b).

(2) Where the Contractor or their Subcontractor is not the PDA and is un-registered, they shall not produce, modify, or update SPIS designs. They shall obtain current SPIS design(s) from the Authority or a registered organisation before proceeding with manufacture of Packaging. To allow designs to be provided in ample time, they should apply for SPIS designs as soon as practicable.

(3) Where the Contractor or their Subcontractor is un-registered and has been given authority to produce, modify, and update SPIS designs by the Contract, they shall obtain approval for their design from a registered organisation using DEFFORM 129a before proceeding, then follow clause 22.g(1)(b).

(4) Where the Contractor or their Subcontractor is not a PDA but is registered, they shall follow clauses 22.g(1)(a) and 22.g(1)(b).

h. If special jigs, tooling etc., are required for the production of MLP, the Contractor shall obtain written approval from the Commercial Officer before providing them. Any approval given will be subject to the terms of DEFCON 23 (SC2) or equivalent condition, as appropriate.

i. In addition to any marking required by international or national legislation or regulations, the following package labelling and marking requirements apply:

(1) If the Contract specifies UK or NATO MPL, labelling and marking of the packages shall be in accordance with Def Stan 81-041 (Part 6) and this Condition as follows:

(a) Labels giving the mass of the package, in kilograms, shall be placed such that they may be clearly seen when the items are stacked during storage.

(b) Each consignment package shall be marked with details as follows:

- i. name and address of consignor;
- ii. name and address of consignee (as stated in the Contract or order);
- iii. destination where it differs from the consignee's address, normally either:
  - (i). delivery destination / address; or
  - (ii). transit destination, where delivery address is a point for aggregation / disaggregation and / or onward shipment elsewhere, e.g. railway station, where that mode of transport is used;

iv. the unique order identifiers and the CP&F Delivery Label / Form which shall be prepared in accordance with DEFFORM 129J.

(i). If aggregated packages are used, their consignment marking and identification requirements are stated at clause 22.l.

(2) If the Contract specifies Commercial Packaging, an external surface of each PPQ package and each consignment package, if it contains identical PPQ packages, shall be marked, using details of the Contractor Deliverables as shown in the Contract schedule, to state the following:

- (a) description of the Contractor Deliverable;
- (b) the full thirteen digit NATO Stock Number (NSN);
- (c) the PPQ;
- (d) maker's part / catalogue, serial and / or batch number, as appropriate;
- (e) the Contract and order number when applicable;
- (f) the words "Trade Package" in bold

lettering, marked in BLUE in respect of trade packages, and BLACK in respect of export trade packages;

(g) shelf life of item where applicable;

(h) for rubber items or items containing rubber, the quarter and year of vulcanisation or manufacture of the rubber product or component (marked in accordance with Def Stan 81-041);

(i) any statutory hazard markings and any handling markings, including the mass of any package which exceeds 3kg gross; and

(j) any additional markings specified in the Contract.

j. Bar code marking shall be applied to the external surface of each consignment package and to each PPQ package contained therein. The default symbology shall be as specified in Def Stan 81-041 (Part 6). As a minimum the following information shall be marked on packages:

- (1) the full 13-digit NSN;
- (2) denomination of quantity (D of Q);
- (3) actual quantity (quantity in package);
- (4) manufacturer's serial number and / or batch number, if one has been allocated; and
- (5) the CP&F-generated unique order identifier.

k. Requirements for positioning bar codes in relation to related text, as well as positioning on package etc., are defined in Def Stan 81-041 (Part 6). If size of the bar code does not allow a label to be directly attached, then a tag may be used. Any difficulties over size or positioning of barcode markings shall initially be referred to the organisation nominated in Box 3 of Annex A to Schedule 3 (Contract Data Sheet).

l. The requirements for the consignment of aggregated packages are as follows:

(1) With the exception of packages containing Dangerous Goods, over-packing for delivery to the consignee shown in the Contract may be used by the consignor to aggregate a number of packages to different Packaging levels, provided that the package contains Contractor Deliverables of only one NSN or class group. Over-packing shall be in the cheapest commercial form consistent with ease of handling and protection of over-packed items.

(2) Two adjacent sides of the outer container shall be clearly marked to show the following:

- (a) class group number;
- (b) name and address of consignor;
- (c) name and address of consignee (as stated on the Contract or order);
- (d) destination if it differs from the consignee's address, normally either:
  - i. delivery destination / address; or
  - ii. transit destination, if the delivery address is a point of aggregation / disaggregation and / or onward shipment e.g. railway station, where that mode of transport is used;

(e) where applicable, the reference number of the delivery note produced by CP&F relating to the contents. The consignee's copy of each delivery note shall be placed in the case / container. If the Contractor Deliverables listed in the delivery note are packed in several cases, the consignee's copy shall be placed in the first case and a separate list detailing the contents shall be prepared for each case after the first and placed in the case to which it relates. Each case is to be numbered to indicate both the number of the case and the total number of cases concerned e.g. 1/3, 2/3, 3/3;

(f) the CP&F-generated shipping label; and

(g) any statutory hazard markings and any handling markings.

m. Authorisation of the Contractor to undertake Packaging design, or to use a packaging design, that was not part of the original requirement under the Contract, shall be considered as an alteration to the specification in accordance with Condition 6 (Formal Amendments to the Contract).

n. The Contractor shall ensure that timber and wood-containing products supplied under the Contract comply with the provisions of Condition 24 (Timber and Wood-Derived Products) and Annex I and Annex II of the International Standards for Phytosanitary Measures, "Guidelines for Regulating Wood Packaging Material in International Trade", Publication No 15 (ISPM 15).

o. All Packaging shall meet the requirements of the Packaging (Essential Requirements) Regulations 2003 (as amended) where applicable.

p. In any design work the Contractor shall comply with the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (as amended) or equivalent legislation. Evidence of compliance shall be a contractor record in accordance with Condition 17 (Contractor's Records).

q. This Condition is concerned with the supply of Packaging suitable to protect and ease handling, transport and storage of specified items. Where there is a failure of suitable Packaging (a design failure), or Packaging fails and this is attributed to the Packaging supplier, then the supplier shall be liable for the cost of replacing the Packaging.

r. Liability for other losses resulting from Packaging failure or resulting from damage to Packaging, (such as damage to the packaged item etc.), shall be specified elsewhere in the Contract.

s. General requirements for service Packaging, including details of UK and NATO MLP and Commercial Packaging descriptions, are contained in Def Stan 81-041 (Part 1) "Packaging of Defence Materiel". Def Stans, NATO Standardisation Agreements (STANAGs), and further information are available from the DStan internet site at: <https://www.dstan.mod.uk/>

t. Unless specifically stated otherwise in the invitation to tender or the Contract, reference to any standard including Def Stans or STANAGs in any invitation to tender or Contract document means the edition and all amendments extant at the date of such tender or Contract.

u. In the event of conflict between the Contract and Def Stan 81-041, the Contract shall take precedence.

### **23. Supply of Data for Hazardous Materials or Substances in Contractor Deliverables**

a. The Contractor shall provide to the Authority:

- (1) for each hazardous material or substance supplied, a Safety Data Sheet (SDS) in accordance with the extant Classification, Labelling and Packaging (GB CLP) Regulation; and
- (2) for each Contractor Deliverable containing hazardous materials or substances, safety information as required by the Health and Safety at Work, etc Act 1974, at the time of supply.

Nothing in this Condition shall reduce or limit any statutory duty or legal obligation of the Authority or the Contractor.

b. If the Contractor Deliverable contains hazardous materials or substances, or is a substance falling within the scope of the extant UK REACH Regulation:

- (1) the Contractor shall provide to the Authority an SDS for the substance in accordance with the Regulation. If the Contractor becomes aware of new information which may affect the risk management measures or new information on the hazard, the Contractor shall update the SDS and forward it to the Authority and to the address listed in clause 23.h below; and

- (2) the Authority, if it becomes aware of new information regarding the hazardous properties of the substance, or any other information that might call into question the appropriateness of the risk management measures identified in the SDS supplied, shall report this information in writing to the Contractor.

c. If the Contractor is required, under, or in connection with the Contract, to supply Contractor Deliverables or components of Contractor Deliverables that, in the course of their use, maintenance, disposal, or in the event of an accident, may release hazardous materials or substances, they shall provide to the Authority a list of those hazardous materials or substances, and for each hazardous material or substance listed, provide an SDS.

d. The Contractor shall provide to the Authority a completed Schedule 6 (Hazardous Contractor Deliverables, Materials or Substances Supplied under the Contract: Data Requirements) in accordance with Schedule 3 (Contract Data Sheet).

e. If the Contractor Deliverables, materials or substances are ordnance, munitions or explosives, in addition to the requirements of the GB CLP and UK REACH the Contractor shall comply with hazard reporting requirements of DEF STAN 07-085 Design Requirements for Weapons and Associated Systems.

f. If the Contractor Deliverables, materials or substances are or contain or embody a radioactive substance as defined in the extant Ionising Radiation Regulations, the Contractor shall additionally provide details of:

- (1) activity; and
- (2) the substance and form (including any isotope);

g. If the Contractor Deliverables, materials or substances have magnetic properties, the Contractor shall additionally provide details of the magnetic flux density at a defined distance, for the condition in which it is packed.

h. Any SDS to be provided in accordance with this Condition, including any related information to be supplied in compliance with the Contractor's statutory duties under clause 23.a.(1) and 23.b.(1), any information arising from the provisions of clauses 23.e, 23.f and 23.g and the completed Schedule 6, shall be sent directly to the Authority's Representative (Commercial) as soon as practicable, and no later than one (1) month prior to the Contract delivery date, unless otherwise stated in Schedule 3 (Contract Data Sheet). In addition, so that the safety information can reach users without delay, a copy shall be sent preferably as an email with attachment(s) in Adobe PDF or MS WORD format, or, if only hardcopy is available, to the addresses below:

- (1) Hard copies to be sent to:  
Hazardous Stores Information System (HSIS)

Department of Safety & Environment, Quality and Technology (DS & EQT)

Spruce 2C, #1260,

MOD Abbey Wood (South)

Bristol BS34 8JH

- (2) Emails to be sent to:  
[DESTECH-QSEPEnv-HSISMulti@mod.gov.uk](mailto:DESTECH-QSEPEnv-HSISMulti@mod.gov.uk)

i. Failure by the Contractor to comply with the requirements of this Condition shall be grounds for rejecting the affected Contractor Deliverables. Any withholding of information concerning Hazardous Contractor Deliverables, materials or substances shall be regarded as a material breach of Contract under Condition 42 (Material Breach) for which the Authority reserves the right to require the Contractor to rectify the breach immediately at no additional

cost to the Authority or to terminate the Contract in accordance with Condition 42.

j. Where delivery is made to the Defence Fulfilment Centre (DFC) and / or other Team Leidos location / building, the Contractor must comply with the Logistic Commodities and Services Transformation (LCST) Supplier Manual.

## **24. Timber and Wood-Derived Products**

a. All Timber and Wood-Derived Products supplied by the Contractor under the Contract:

- (1) shall comply with the Contract Specification; and
- (2) must originate either:
  - (a) from a Legal and Sustainable source; or
  - (b) from a FLEGT-licensed or equivalent source.

b. In addition to the requirements of clause 24.a, all Timber and Wood-Derived Products supplied by the Contractor under the Contract shall originate from a forest source where management of the forest has full regard for:

- (1) identification, documentation and respect of legal, customary and traditional tenure and use rights related to the forest;
- (2) mechanisms for resolving grievances and disputes including those relating to tenure and use rights, to forest management practices and to work conditions; and
- (3) safeguarding the basic labour rights and health and safety of forest workers.

c. If requested by the Authority, the Contractor shall provide to the Authority Evidence that the Timber and Wood-Derived Products supplied to the Authority under the Contract comply with the requirements of clause 24.a or 24.b or both.

d. The Authority reserves the right at any time during the execution of the Contract and for a period of five (5) years from final Delivery under the Contract to require the Contractor to produce the Evidence required for the Authority's inspection within fourteen (14) days of the Authority's request.

e. If the Contractor has already provided the Authority with the Evidence required under clause 24.c, the Contractor may satisfy these requirements by giving details of the previous notification and confirming the Evidence remains valid and satisfies the provisions of clauses 24.a or 24.b or both.

f. The Contractor shall maintain records of all Timber and Wood-Derived Products delivered to and accepted by the Authority, in accordance with Condition 17 (Contractor's Records).

g. Notwithstanding clause 24.c, if exceptional circumstances render it strictly impractical for the Contractor to record Evidence of proof of timber origin for previously used Recycled Timber, the Contractor shall support the use of this Recycled Timber with:

- (1) a record tracing the Recycled Timber to its previous end use as a standalone object or as part of a structure; and
- (2) an explanation of the circumstances that rendered it impractical to record Evidence of proof of timber origin.

h. The Authority reserves the right to decide, except where in the Authority's opinion the timber supplied is incidental to the requirement and from a low risk source, whether the Evidence submitted to it demonstrates compliance with clause 24.a or 24.b, or both. In the event that the Authority is not satisfied, the Contractor shall commission and meet the costs of an Independent Verification and resulting report that will:

- (1) verify the forest source of the timber or wood; and
- (2) assess whether the source meets the relevant

criteria of clause 24.b.

i. The statistical reporting requirement at clause 24.j applies to all Timber and Wood-Derived Products delivered under the Contract. The Authority reserves the right to amend the requirement for statistical reporting, in the event that the UK Government changes the requirement for reporting compliance with the Government Timber Procurement Policy. Amendments to the statistical reporting requirement will be made in accordance with Condition 6 (Formal Amendments to the Contract).

j. The Contractor shall provide to the Authority, a completed Schedule 7 (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements), the data or Information the Authority requires in respect of Timber and Wood-Derived Products delivered to the Authority under the Contract, or in respect of each order in the case of a Framework Agreement, or at such other frequency as stated in the Contract. The Contractor shall send all completed Schedule 7s (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements), including nil returns where appropriate, to the Authority's Representative (Commercial).

k. The Schedule 7 (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements) may be amended by the Authority from time to time, in accordance with Condition 6 (Formal Amendments to the Contract).

l. The Contractor shall obtain any wood, other than processed wood, used in Packaging from:

- (1) companies that have a full registered status under the Forestry Commission and Timber Packaging and Pallet Confederation's UK Wood Packaging Material Marking Programme (more detailed information can be accessed at [www.forestry.gov.uk](http://www.forestry.gov.uk)) and all such wood shall be treated for the elimination of raw wood pests and marked in accordance with that Programme; or
- (2) sources supplying wood treated and marked so as to conform to Annex I and Annex II of the International Standard for Phytosanitary Measures, "Guidelines for Regulating Wood Packaging Material in International Trade", Publication No 15 published by the Food and Agricultural Organisation of the United Nations (ISPM15) (more detailed information can be accessed at [www.fao.org](http://www.fao.org)).

## **25. Certificate of Conformity**

a. Where required in Schedule 3 (Contract Data Sheet) the Contractor shall provide a Certificate of Conformity (CofC) in accordance with Schedule 2 (Schedule of Requirements) and any applicable Quality Plan. One copy of the CofC shall be sent to the Authority's Representative (Commercial) upon Delivery, and one copy shall be provided to the Consignee upon Delivery.

b. The Contractor shall consider the CofC to be a record in accordance with Condition 17 (Contractor's Records).

c. The Information provided on the CofC shall include:

- (1) Contractor's name and address;
- (2) Contractor unique CofC number;
- (3) Contract number and where applicable Contract amendment number;
- (4) details of any approved concessions;
- (5) acquirer name and organisation;
- (6) Delivery address;
- (7) Contract Item Number from Schedule 2 (Schedule of Requirements);
- (8) description of Contractor Deliverable, including part number, specification and configuration status;
- (9) identification marks, batch and serial numbers in accordance with the Specification;
- (10) quantities;

(11) a signed and dated statement by the Contractor that the Contractor Deliverables comply with the requirements of the Contract and approved concessions.

Exceptions or additions to the above are to be documented.

d. Where Schedule 2 (Schedule of Requirements) and any applicable Quality Plan require demonstration of traceability and design provenance through the supply chain the Contractor shall include in any relevant subcontract the requirement for the Information called for at clause 25.c. The Contractor shall ensure that this Information is available to the Authority through the supply chain upon request in accordance with Condition 17 (Contractor Records).

## **26. Access to Contractor's Premises**

a. The Contractor shall provide to the Authority's Representatives following reasonable Notice, relevant accommodation/facilities, at no direct cost to the Authority, and all reasonable access to their premises for the purpose of monitoring the Contractor's progress and quality standards in performing the Contract.

b. As far as reasonably practical, the Contractor shall ensure that the provisions of clause 26.a are included in their subcontracts with those suppliers identified in the Contract. The Authority, through the Contractor, shall arrange access to such Subcontractors.

## **27. Delivery / Collection**

a. Schedule 3 (Contract Data Sheet) shall specify whether the Contractor Deliverables are to be Delivered to the Consignee by the Contractor or Collected from the Consignor by the Authority.

b. Where the Contractor Deliverables are to be Delivered by the Contractor (or a third party acting on behalf of the Contractor), the Contractor shall, unless otherwise stated in writing:

- (1) contact the Authority's Representative as detailed in Schedule 3 (Contract Data Sheet) in advance of the Delivery Date in order to agree administrative arrangements for Delivery and provide any Information pertinent to Delivery requested;
- (2) comply with any special instructions for arranging Delivery in Schedule 3 (Contract Data Sheet);
- (3) ensure that each consignment of the Contractor Deliverables is accompanied by, (as specified in Schedule 3 (Contract Data Sheet)), a DEFFORM 129J in accordance with the instructions;
- (4) be responsible for all costs of Delivery; and
- (5) Deliver the Contractor Deliverables to the Consignee at the address stated in Schedule 2 (Schedule of Requirements) by the Delivery Date between the hours agreed by the Parties.

c. Where the Contractor Deliverables are to be Collected by the Authority (or a third party acting on behalf of the Authority), the Contractor shall, unless otherwise stated in writing:

- (1) contact the Authority's Representative (Transport) as detailed in box 10 of Annex A to Schedule 3 (Contract Data Sheet) in advance of the Delivery Date in order to agree specific arrangements for Collection and provide any Information pertinent to the Collection requested;
- (2) comply with any special instructions for arranging Collection in Schedule 3 (Contract Data Sheet);
- (3) ensure that each consignment of the Contractor Deliverables is accompanied by, (as specified in Schedule 3 (Contract Data Sheet)), a DEFFORM 129J in accordance with the instructions;
- (4) ensure that the Contractor Deliverables are available for Collection by the Authority from the

Consignor (as specified in Schedule 3 (Contract Data Sheet)) by the Delivery Date between the hours agreed by the Parties; and

(5) in the case of Overseas consignments, ensure that the Contractor Deliverables are accompanied by the necessary transit documentation. All Customs clearance shall be the responsibility of the Authority's Representative (Transport).

d. Title and risk in the Contractor Deliverables shall only pass from the Contractor to the Authority:

- (1) on the Delivery of the Contractor Deliverables by the Contractor to the Consignee in accordance with clause 27.b; or
- (2) on the Collection of the Contractor Deliverables from the Consignor by the Authority once they have been made available for Collection by the Contractor in accordance with clause 27.c.

## **28. Acceptance**

a. Acceptance of the Contractor Deliverables shall occur in accordance with any acceptance procedure specified in Schedule 8 (Acceptance Procedure). If no acceptance procedure is so specified acceptance shall occur when either:

- (1) the Authority does any act in relation to the Contractor Deliverable which is inconsistent with the Contractor's ownership; or
- (2) the time limit in which to reject the Contractor Deliverables defined in clause 29.2.b has elapsed.

## **29. Rejection and Counterfeit Materiel**

### **Rejection:**

a. If any of the Contractor Deliverables Delivered to the Authority do not conform to the Specification or any other terms of the Contract, then (without limiting any other right or remedy that the Authority may have) the Authority may reject the Contractor Deliverables (in whole or in part). The Authority shall return these Contractor Deliverables to the Contractor at the Contractor's risk and cost.

b. Rejection of any of the Contractor Deliverables under clause 29.a shall take place by the time limit for rejection specified in Schedule 3 (Contract Data Sheet), or if no such period is specified, the Contractor Deliverables shall be deemed to be accepted within a reasonable period of time.

### **Counterfeit Materiel:**

c. Where the Authority suspects that any Contractor Deliverable or consignment of Contractor Deliverables contains Counterfeit Materiel, it shall:

- (1) notify the Contractor of its suspicion and reasons therefore;
- (2) where reasonably possible, and if requested by the Contractor within 10 Business Days of such notification, (at the Contractor's own risk and expense and subject to any reasonable controls specified by the Authority) afford the Contractor the facility to (i) inspect the Contractor Deliverable or consignment and/or (ii) obtain a sample thereof for validation or testing purposes.
- (3) give the Contractor a further 20 Business Days or such other reasonable period agreed by the Authority, from the date of the inspection at 29.c.(2).(i) or the provision of a sample at 29.c.(2).(ii), to comment on whether the Contractor Deliverable or consignment meets the definition of Counterfeit Materiel; and
- (4) determine, on the balance of probabilities and strictly on the evidence available to it at the time,



whether the Contractor Deliverable or consignment meets the definition of Counterfeit Materiel. Where the Authority has determined that the Contractor Deliverable, part or consignment of Contractor Deliverables contain Counterfeit Material then it may reject the Contractor Deliverable, part or consignment under 29.a-29.b (Rejection).

d. In addition to its rights under 29.a and 29.b (Rejection), where the Authority reasonably believes that any Contractor Deliverable or consignment of Contractor Deliverables contains Counterfeit Materiel, it shall be entitled to:

- (1) retain any Counterfeit Materiel; and/or
- (2) retain the whole or any part of such Contractor Deliverable or consignment where it is not possible to separate the Counterfeit Materiel from the rest of the Contractor Deliverable, or consignment; and such retention shall not constitute acceptance under Condition 28 (Acceptance).

e. Where the Authority intends to exercise its rights under clause 29.d, it shall where reasonable permit the Contractor, within a period specified by the Authority, to arrange at their own risk and expense and subject to any reasonable controls specified by the Authority, for:

- (1) the separation of Counterfeit Materiel from any Contractor Deliverable or part of a Contractor Deliverable; and/or
- (2) the removal of any Contractor Deliverable or part of a Contractor Deliverable that the Authority is satisfied does not contain Counterfeit Materiel.

f. In respect of any Contractor Deliverable, consignment or part thereof that is retained in accordance with clause 29.d, including where the Authority permits the Contractor to remove non-Counterfeit Materiel under clause 29.e but the Contractor fails to do so within the period specified by the Authority and subject to clause 29.j, the Authority shall be entitled to exercise any, all, or any combination of, the following rights:

- (1) to dispose of it responsibly, and in a manner that does not permit its reintroduction into the supply chain or market;
- (2) to pass it to a relevant investigatory or regulatory authority;
- (3) to retain conduct or have conducted further testing including destructive testing, for further investigatory, regulatory or risk management purposes. Results from any such tests shall be shared with the Contractor; and/or
- (4) to recover the reasonable costs of testing, storage, access, and/or disposal of it from the Contractor.

Exercise of the rights granted at clauses 29.f.(1) to 29.f.(3) shall not constitute acceptance under Condition 28 (Acceptance).

g. Any scrap or other disposal payment received by the Authority shall be off set against any amount due to the Authority under clause 29.f.(4). If the value of the scrap or other disposal payment exceeds the amount due to the Authority under clause 29.f.(4) then the balance shall accrue to the Contractor.

h. The Authority shall not use a retained Article or consignment other than as permitted in clauses 29.c – 29.j.

i. The Authority may without restriction report a discovery of Counterfeit Materiel and disclose information necessary for the identification of similar materiel and its possible sources.

j. The Contractor shall not be entitled to any payment or compensation from the Authority as a result of the Authority exercising the rights set out in clauses 29.c – 29.j except where it has been determined in accordance with Condition 39 (Dispute Resolution) that the Authority has made an incorrect determination in accordance with clause 20.c.(4). In such circumstances the Authority shall reimburse

the Contractors reasonable costs of complying with clause 29.c.

### **30. Diversion Orders**

a. The Authority shall notify the Contractor at the earliest practicable opportunity if it becomes aware that a Contractor Deliverable is likely to be subject to a Diversion Order.

b. The Authority may issue a Diversion Order for the urgent delivery of the Contractor Deliverables identified in it. These Contractor Deliverables are to be delivered by the Contractor using the quickest means available as agreed by the Authority.

c. The Authority reserves the right to cancel the Diversion Order.

d. If the terms of the Diversion Order are unclear, the Contractor shall immediately contact the Representative of the Authority who issued it for clarification and/or further instruction.

e. If the Diversion Order increases the quantity of Contractor Deliverables beyond the scope of the Contract, it is to be returned immediately to the Authority's Commercial Officer with an appropriate explanation.

f. The Contractor shall be entitled to reasonable additional delivery and packaging costs incurred in complying with the Diversion Order or cancellation. Claims are to be submitted by the Contractor to the Authority's Commercial Officer together with applicable receipts and agreed as an amendment to the Contract in accordance with Condition 6 (Formal Amendments to the Contract). The Contractor shall comply with the requirements of the Diversion Order upon receipt of the Diversion Order.

### **31. Self-to-Self Delivery**

Where it is stated in Schedule 3 (Contract Data Sheet) that any Contractor Deliverable is to be Delivered by the Contractor to their own premises, or to those of a Subcontractor ('self-to-self delivery'), the risk in such a Contractor Deliverable shall remain vested in the Contractor until such time as it is handed over to the Authority.

## **Licences and Intellectual Property**

### **32. Import and Export Licences**

a. If, in the performance of the Contract, the Contractor needs to import into the UK or export out of the UK anything not supplied by or on behalf of the Authority and for which a UK import or export licence is required, the responsibility for applying for the licence shall rest with the Contractor. The Authority shall provide the Contractor with sufficient information, certification, documentation and other reasonable assistance in obtaining any necessary UK import or export licence.

b. When an export licence or import licence or authorisation either singularly or in combination is required from a foreign government for the performance of the Contract, the Contractor shall as soon as reasonably practicable consult with the Authority on the licence requirements. Where the Contractor is the applicant for the licence or authorisation the Contractor shall:

- (1) ensure that when end use or end user restrictions, or both, apply to all or part of any Contractor Deliverable (which for the purposes of this Condition shall also include information, technical data and software), the Contractor, unless otherwise agreed with the Authority, shall identify in the application:

(a) the end user as: Her Britannic Majesty's Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter "HM

Government"); and

(b) the end use as: For the Purposes of HM Government; and

(2) include in the submission for the licence or authorisation a statement that "information on the status of processing this application may be shared with the Ministry of Defence of the United Kingdom".

c. If the Contractor or any Subcontractor in the performance of the Contract needs to export materiel not previously supplied by or on behalf of the Authority for which an export licence or import licence or authorisation from a foreign government is required, the responsibility for instituting expeditious action to apply for and obtain the licence shall rest with the Contractor or that Subcontractor. For the purposes of this Condition materiel shall mean information, technical data and items, including Contractor Deliverables, components of Contractor Deliverables and software.

d. Where the Contract performance requires the export of materiel for which a foreign export licence or import licence or authorisation is required, the Contractor shall include the dependencies for the export licence or import licence or authorisation application, grant and maintenance in the Contract risk register and in the risk management plan for the Contract, with appropriate review points. Where there is no requirement under the Contract for a risk management plan the Contractor shall submit this information to the Authority's representative.

e. During the term of the Contract and for a period of up to 2 years from completion of the Contract, the Authority may make a written request to the Contractor to seek a variation to the conditions to a foreign export licence or import licence or authorisation to enable the Authority to re-export or re-transfer a licensed or authorised item or licensed or authorised information from the UK to a non-licensed or unauthorised third party. If the Authority makes such a request it will consult with the Contractor before making a determination of whether the Authority or the Contractor is best placed in all the circumstance to make the request. Where, subsequent to such consultation the Authority notifies the Contractor that the Contractor is best placed to make such request:

(1) the Contractor shall, or procure that the Contractor's Subcontractor shall, expeditiously consider whether or not there is any reason why it should object to making the request and, where it has no objection, file an application to seek a variation of the applicable export licence or import licence or authorisation in accordance with the procedures of the licensing authority. Where the Contractor has an objection, the Parties shall meet within five (5) working days to resolve the issue and should they fail the matter shall be escalated to an appropriate level within both Parties' organisations, to include their respective export licensing subject matter experts; and

(2) the Authority shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the application for the requested variation.

f. Where the Authority determines that it is best placed to make such request the Contractor shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the Authority to make the application for the requested variation.

g. Where the Authority invokes clause 32.e or 32.f the Authority will pay the Contractor a fair and reasonable charge for this service based on the cost of providing it.

h. Where the Contractor subcontracts work under the Contract, which is likely to be subject to foreign export control, import control or both the Contractor shall use reasonable endeavours to incorporate in each subcontract equivalent obligations to those set out in this Condition.

Where it is not possible to include equivalent terms to those set out in this Condition, the Contractor shall report that fact and the circumstances to the Authority.

i. Without prejudice to HM Government's position on the validity of any claim by a foreign government to extra-territoriality, the Authority shall provide the Contractor with sufficient information, certification, documentation and other reasonable assistance to facilitate the granting of export licences or import licences or authorisations by a foreign Government in respect of the performance of the Contract.

j. The Authority shall provide such assistance as the Contractor may reasonably require in obtaining any UK export licences necessary for the performance of the Contract.

k. The Contractor shall use reasonable endeavours to identify whether any Contractor Deliverable is subject to:

(1) a non-UK export licence, authorisation or exemption; or

(2) any other related transfer or export control, that imposes or will impose end use, end user or re-transfer or re-export restrictions, or restrictions on disclosure to individuals based upon their nationality. This does not include the Intellectual Property-specific restrictions of the type referred to in Condition 33 (Third Party Intellectual Property – Rights and Restrictions).

l. If at any time during the term of the Contract the Contractor becomes aware that all or any part of the Contractor Deliverables are subject to clause 32.k(1) or 32.k(2), they shall notify the Authority of this as soon as reasonably practicable by providing details in the DEFFORM 528 or other mutually agreed alternative format. Such notification shall be no later than thirty (30) days of knowledge of any affected Contractor Deliverable and in any event such notification shall be not less than thirty (30) days prior to delivery of the Contractor Deliverables.

m. If the information to be provided under clause 32.l has been provided previously to the Authority by the Contractor under the Contract, the Contractor may satisfy these requirements by giving details of the previous notification and confirming they remain valid and satisfy the provisions of clause 32.l.

n. During the term of the Contract, the Contractor shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under clauses 32.l or 32.m of which they become or are aware that would affect the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those clauses by issuing an updated DEFFORM 528 to the Authority.

o. For a period of up to 2 years from completion of the Contract and in response to a specific request by the Authority, the Contractor shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under clause 32.l or 32.m of which they become aware that would affect the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those clauses by issuing an updated DEFFORM 528 to the Authority.

p. Where following receipt of materiel from a Subcontractor or any of their other suppliers restrictions are notified to the Contractor by that Subcontractor, supplier or other third party or are identified by the Contractor, the Contractor shall immediately inform the Authority by issuing an updated DEFFORM 528. Within [X] days of such notification, the Contractor shall propose to the Authority actions to mitigate the impact of such restrictions. Such proposals may include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. The Authority shall notify the contractor within [X] days of receipt of a proposal whether it is acceptable and where appropriate the Contract shall be modified in accordance with its terms to implement the proposal.



q. If the restrictions prevent the Contractor from performing their obligations under the Contract and have not been removed, modified or otherwise satisfactorily managed within a reasonable time, the Authority may at its absolute discretion elect to amend the contract in accordance with Condition 6 or as otherwise may be provided by the Contract, or to terminate the Contract. Except as set out in clause 32.r, in the event of termination in these circumstances termination shall be on fair and reasonable terms having regard to all the circumstances including payments already made and that would otherwise be due under the Contract, costs incurred by the Contractor and benefits received by the Authority. The Parties, acting in good faith, will use all reasonable endeavours to agree such fair and reasonable terms failing which either Party may refer the matter to dispute resolution in accordance with the provisions in the Contract.

r. In the event that the restrictions notified to the Authority pursuant to clause 32.l were known or ought reasonably have been known by the Contractor (but were not disclosed) at contract award or if restrictions notified to the Authority pursuant to clauses 32.n or 32.p were known or ought reasonably to have been known by the Contractor at the date of submission of the most recent DEFFORM 528 submitted to the Authority in accordance with clause 32.l, termination under clause 32.t will be in accordance with Condition 42 (Material Breach) and the provisions of clause 32.v will not apply.

s. The Authority shall use reasonable endeavours to identify any export control restrictions applying to materiel to be provided to the Contractor as Government Furnished Assets (GFA). Where the Authority is to provide materiel necessary to enable the Contractor to perform the Contract or in respect of which the Services are to be provided, and that materiel is subject to a non-UK export licence, authorisation, exemption or other related transfer or export control as described in the provisions of clause 32.k, the Authority shall provide a completed DEFFORM 528 or will provide a new or updated DEFFORM 528 to the Contractor within thirty (30) days of the date of knowledge and in any case not later than thirty (30) days prior to the delivery of such materiel to the Contractor.

t. In the event that the Authority becomes aware that the DEFFORM 528 disclosure was incomplete or inaccurate or in the event additional such materiel is identified then the Authority shall provide, as soon as reasonably practicable a new or revised DEFFORM 528. In the event that the Authority becomes aware that a prior disclosure included in DEFFORM 528 submitted to the Contractor was incomplete or inaccurate less than thirty (30) days prior to the delivery to the Contractor of any material to which the updated or new disclosure relates, the Parties will meet as soon as reasonably practicable to discuss how to mitigate the impact of the incomplete or inaccurate disclosure.

u. Where:

- (1) restrictions are advised by the Authority to the Contractor in a DEFFORM 528 provided pursuant to clauses 32.s or 32.t or both; or
- (2) any of the information provided by the Authority in any DEFFORM 528 proves to be incorrect or inaccurate;

the Authority and the Contractor shall act promptly to mitigate the impact of such restrictions or incorrect or inaccurate information. Such mitigation shall include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. If the restrictions or incorrect or inaccurate information adversely affect the ability of the Contractor to perform their obligations under the Contract, the matter shall be handled under the terms of Condition 6 (Formal Amendments to the Contract) or as may otherwise be provided by the Contract as appropriate and if no alternative solution satisfies the

essential terms of the Contract and the restrictions have not been removed, modified or otherwise satisfactorily managed within a reasonable time the Authority may terminate the Contract. Termination under these circumstances will be under the terms of Condition 41 (Termination for Convenience) and as referenced in the Contract.

v. Pending agreement of any amendment of the Contract as set out in clause 32.q or 32.u, provided the Contractor takes such steps as are reasonable to mitigate the impact, the Contractor shall be relieved from their obligations to perform those elements of the Contract directly affected by the restrictions or provision of incorrect or incomplete information.

### 33. Third Party Intellectual Property – Rights and Restrictions

a. The Contractor and, where applicable any Subcontractor, shall promptly notify the Authority as soon as they become aware of:

- (1) any invention or design the subject of patent or registered Design Rights (or application thereof) owned by a third party which appears to be relevant to the performance of the Contract or to use by the Authority of anything required to be done or delivered under the Contract;
- (2) any restriction as to disclosure or use, or obligation to make payments in respect of any other intellectual property (including technical Information) required for the purposes of the Contract or subsequent use by the Authority of anything delivered under the Contract and, where appropriate, the notification shall include such Information as is required by Section 2 of the Defence Contracts Act 1958;
- (3) any allegation of infringement of intellectual property rights made against the Contractor and which pertains to the performance of the Contract or subsequent use by the Authority of anything required to be done or delivered under the Contract.

clause 33.a does not apply in respect of Contractor Deliverables normally available from the Contractor as a Commercial Off The Shelf (COTS) item or service.

b. If the Information required under clause 33.a has been notified previously, the Contractor may meet their obligations by giving details of the previous notification.

c. For COTS Contractor Deliverables patents and registered designs in the UK, in respect of any question arising (by way of an allegation made to the Authority or Contractor, or otherwise) that the manufacture or provision under the Contract of Contractor Deliverables normally available from the Contractor as a COTS item or service is an infringement of a UK patent or registered design not owned or controlled by the Contractor or the Authority, the Contractor shall, subject to the agreement of the third party owning such patent or registered design, be given exclusive conduct of any and all negotiations for the settlement of any claim or the conduct of any litigation arising out of such question. The Contractor shall indemnify the Authority, its officers, agents and employees against any liability and cost arising from such allegation. This Condition shall not apply if:

- (1) the Authority has made or makes an admission of any sort relevant to such question;
- (2) the Authority has entered or enters into any discussions on such question with any third party without the prior written agreement of the Contractor;
- (3) the Authority has entered or enters into negotiations in respect of any relevant claim for compensation in respect of Crown Use under Section 55 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1977;

(4) legal proceedings have been commenced against the Authority or the Contractor in respect of Crown Use, but only to the extent of such Crown Use that has been properly authorised.

d. The indemnity in clause 33.c does not extend to use by the Authority of anything supplied under the Contract where that use was not reasonably foreseeable at the time of the Contract.

e. In the event that the Authority has entered into negotiation in respect of a claim for compensation, or legal proceedings in respect of the Crown Use have commenced, the Authority shall forthwith authorise the Contractor for the purposes of performing the Contract (but not otherwise) to utilise a relevant invention or design in accordance with Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949 and to use any model, document or information relating to any such invention or design which may be required for that purpose.

f. For all other Contractor Deliverables patents and registered designs in the UK, if a relevant invention or design has been notified to the Authority by the Contractor prior to the Effective Date of Contract, then unless it has been otherwise agreed, under the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, the Contractor is hereby authorised to utilise that invention or design, notwithstanding the fact that it is the subject of a UK Patent or UK Registered Design, for the purpose of performing the Contract.

g. If, under clause 33.a, a relevant invention or design is notified to the Authority by the Contractor after the Effective Date of Contract, then:

- (1) if the owner (or its exclusive licensee) takes or threatens in writing to take any relevant action against the Contractor, the Authority shall issue to the Contractor a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, and
- (2) in any event, unless the Contractor and the Authority can agree an alternative course of action, the Authority shall not unreasonably delay the issue of a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949.

h. The Authority shall assume all liability and shall indemnify the Contractor, their officers, agents and employees against liability, including the Contractor's costs, as a result of infringement by the Contractor or their suppliers of any patent, utility model, registered design or like protection outside the United Kingdom in the performance of the Contract when such infringement arises from or is incurred by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.

i. The Contractor shall assume all liability and shall indemnify the Authority, its officers, agents and employees against liability, including the Authority's costs, as a result of infringement by the Contractor or their suppliers of any patent, utility model, registered design or like protection outside the UK in the performance of the Contract when such infringement arises from or is incurred otherwise than by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.

j. The Contractor shall not be entitled to any reimbursement of any royalty, licence fee or similar expense incurred in respect of anything to be done under the Contract, where:

- (1) a relevant discharge has been given under

Section 2 of the Defence Contracts Act 1958, or relevant authorisation in accordance with Sections 55 or 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988 in respect of any intellectual property; or

(2) any obligation to make payments for intellectual property has not been promptly notified to the Authority under clause 33.a.

k. Where authorisation is given by the Authority under clause 33.e, 33.f or 33.g, to the extent permitted by Section 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988, the Contractor shall also be:

- (1) released from payment whether by way of royalties, licence fees or similar expenses in respect of the Contractor's use of the relevant invention or design, or the use of any relevant model, document or information for the purpose of performing the Contract; and
- (2) authorised to use any model, document or information relating to any such invention or design which may be required for that purpose.

l. The Contractor shall assume all liability and indemnify the Authority and its officers, agents and employees against liability, including costs as a result of:

- (1) infringement or alleged infringement by the Contractor or their suppliers of any copyright, database right, Design Right or the like protection in any part of the world in respect of any item to be supplied under the Contract or otherwise in the performance of the Contract;
- (2) misuse of any confidential information, trade secret or the like by the Contractor in performing the Contract;
- (3) provision to the Authority of any Information or material which the Contractor does not have the right to provide for the purpose of the Contract.

m. The Authority shall assume all liability and indemnify the Contractor, their officers, agents and employees against liability, including costs as a result of:

- (1) infringement or alleged infringement by the Contractor or their suppliers of any copyright, database right, Design Right or the like protection in any part of the world in respect of any item provided by the Authority for the purpose of the Contract but only to the extent that the item is used for the purpose of the Contract;
- (2) alleged misuse of any confidential Information, trade secret or the like by the Contractor as a result of use of Information provided by the Authority for the purposes of the Contract, but only to the extent that Contractor's use of that Information is for the purposes intended when it was disclosed by the Authority.

n. The general authorisation and indemnity is:

- (1) clauses 33.a – 33.m represents the total liability of each Party to the other under the Contract in respect of any infringement or alleged infringement of patent or other Intellectual Property Right (IPR) owned by a third party;
- (2) neither Party shall be liable, one to the other, for any consequential loss or damage arising as a result, directly or indirectly, of a claim for infringement or alleged infringement of any patent or other IPR owned by a third party;
- (3) a Party against whom a claim is made or action brought, shall promptly notify the other Party in writing if such claim or action appears to relate to an infringement which is the subject of an indemnity or authorisation given under this Condition by such other Party. The notification shall include particulars of the demands, damages and liabilities claimed or made of

which the notifying Party has notice;

(4) the Party benefiting from the indemnity or authorisation shall allow the other Party, at its own expense, to conduct any negotiations for the settlement of the same, and any litigation that may arise therefrom and shall provide such information as the other Party may reasonably require;

(5) following a notification under clause 33.n(3), the Party notified shall advise the other Party in writing within thirty (30) Business Days whether or not it is assuming conduct of the negotiations or litigation. In that case the Party against whom a claim is made or action brought shall not make any statement which might be prejudicial to the settlement or defence of such a claim without the written consent of the other Party;

(6) the Party conducting negotiations for the settlement of a claim or any related litigation shall, if requested, keep the other Party fully informed of the conduct and progress of such negotiations.

o. If at any time a claim or allegation of infringement arises in respect of copyright, database right, Design Right or breach of confidence as a result of the provision of any Contractor Deliverable by the Contractor to the Authority, the Contractor may at their own expense replace the item with an item of equivalent functionality and performance so as to avoid infringement or breach. The Parties will co-operate with one another to mitigate any claim or damage which may arise from use of third party IPR.

p. Nothing in Condition 33 shall be taken as an authorisation or promise of an authorisation under Section 240 of the Copyright, Designs and Patents Act 1988.

q. Notwithstanding any other provisions of the Contract and for the avoidance of doubt, award of the Contract by the Authority and placement of any contract task under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949. The Contractor acknowledges that any such authorisation by the Authority under its statutory powers must be expressly provided in writing, with reference to the acts authorised and the specific intellectual property involved.

## **Pricing and Payment**

### **34. Contract Price**

a. The Contractor shall provide the Contractor Deliverables to the Authority at the Contract Price. The Contract Price shall be a Firm Price unless otherwise stated in Schedule 3 (Contract Data Sheet).

b. Subject to clause 34.a the Contract Price shall be inclusive of any UK custom and excise or other duty payable. The Contractor shall not make any claim for drawback of UK import duty on any part of the Contract Deliverables supplied which may be for shipment outside of the UK.

### **35. Payment and Recovery of Sums Due**

a. Payment for Contractor Deliverables will be made by electronic transfer and prior to submitting any claims for payment under clause 35.b the Contractor will be required to register their details (Supplier on-boarding) on the Contracting, Purchasing and Finance (CP&F) electronic procurement tool.

b. Where the Contractor submits an invoice to the Authority in accordance with clause 35.a, the Authority will consider and verify that invoice in a timely fashion.

c. The Authority shall pay the Contractor any sums due under such an invoice no later than a period of 30 days from

the date on which the Authority has determined that the invoice is valid and undisputed.

d. Where the Authority fails to comply with clause 35.a and there is undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purpose of clause 35.c after a reasonable time has passed.

e. The approval for payment of a valid and undisputed invoice by the Authority shall not be construed as acceptance by the Authority of the performance of the Contractor's obligations nor as a waiver of its rights and remedies under the Contract.

f. Without prejudice to any other right or remedy, the Authority reserves the right to set off any amount owing at any time from the Contractor to the Authority against any amount payable by the Authority to the Contractor under the Contract or under any other contract with the Authority, or with any other Government Department.

### **36. Value Added Tax**

a. The Contract Price excludes any UK output Value Added Tax (VAT) and any similar EU (or non-EU) taxes chargeable on the supply of Contractor Deliverables by the Contractor to the Authority.

b. If the Contractor is required by UK VAT law to be registered for UK VAT (or has registered voluntarily) in respect of their business activities at the time of any supply, and the circumstances of any supply are such that the Contractor is liable to pay the tax due to HM Revenue and Customs (HMRC), the Authority shall pay to the Contractor in addition to the Contract Price (or any other sum due to the Contractor) a sum equal to the output VAT chargeable on the tax value of the supply of Contractor Deliverables, and all other payments under the Contract according to the law at the relevant tax point.

c. The Contractor is responsible for the determination of VAT liability. The Contractor shall consult their Client Relationship Manager or the HMRC Enquiries Desk (and not the Authority's Representative (Commercial)) in cases of doubt. The Contractor shall notify the Authority's Representative (Commercial) of the Authority's VAT liability under the Contract, and any changes to it, within twenty (20) Business Days of becoming aware the liability is other than at the standard rate of VAT. In the event of any doubt about the applicability of the tax in such cases, the Authority may require the Contractor to obtain, and pass to the Authority, a formal ruling from HMRC. The Contractor shall comply promptly with any such requirement. Where the Contractor obtains a ruling from HMRC, they shall supply a copy to the Authority within three (3) Business Days of receiving that ruling unless they propose to challenge the ruling. Where the Contractor challenges the ruling they shall supply to the Authority a copy of any final decisions issued by HMRC on completion of the challenge within three (3) Business Days of receiving the decision.

d. Where supply of Contractor Deliverables comes within the scope of UK VAT, but the Contractor is not required by UK VAT law to be registered for UK VAT (and has not registered voluntarily), the Authority shall be responsible for assessing and paying over directly to HMRC any UK output VAT due in respect of the Contractor Deliverables. The Contractor shall be responsible for ensuring they take into account any changes in VAT law regarding registration.

e. Where Contractor Deliverables are deemed to be supplied to the Authority outside the UK, the Contractor may be required by the laws of the country where the supply takes place to register there for EU (or non-EU) turnover or similar tax. In that event, the Authority shall pay to the Contractor in addition to the Contract Price (and any other

sum due to the Contractor under the Contract) a sum equal to the tax the Contractor is liable to pay to the tax authorities of the country in question in relation to the Contractor Deliverables within thirty (30) calendar days of a written request for payment of any such sum by the Contractor.

f. In relation to the Contractor Deliverables supplied under the Contract the Authority shall not be required to pay any sum in respect of the Contractor's input VAT (or similar EU or non-EU or both input taxes). However, these input taxes will be allowed where it is established that, despite the Contractor having taken all reasonable steps to recover them, it has not been possible to do so. Where there is any doubt that the Contractor has complied with this requirement the matter shall be resolved in accordance with Condition 39 (Dispute Resolution).

g. Should HMRC decide that the Contractor has incorrectly determined the VAT liability, in accordance with clause 36.b above, the Authority will pay the VAT assessed by HMRC. In the event that HMRC so determines, the Contractor shall pay any interest charged on any assessment or penalties or both directly to HMRC. Such interest or penalties or both shall not be recoverable from the Authority under the Contract or any other contract. The Contractor shall supply the Authority with a copy of all correspondence between HMRC and the Contractor's advisors regarding the VAT assessment within three (3) Business Days of a written request from the Authority for such correspondence.

### 37. Debt Factoring

a. Subject to the Contractor obtaining the prior written consent of the Authority in accordance with Condition 10 (Assignment of Contract), the Contractor may assign to a third Party ("the Assignee") the right to receive payment of the Contract Price or any part thereof due to the Contractor under the Contract (including interest which the Authority incurred through late payment under the Late Payment of Commercial Debts (Interest) Act 1998 ("the Act")). Any assignment of the right to receive payment of the Contract Price (or any part thereof) under this Condition 37 shall be subject to:

- (1) reduction of any sums in respect of which the Authority exercises its right of recovery under clause 0;
- (2) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
- (3) the Authority receiving notification under both clauses 37.b and 37.c(2).

b. In the event that the Contractor obtains from the Authority the consent to assign the right to receive the Contract Price (or any part thereof) under clause 37.a, the Contractor shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.

c. The Contractor shall ensure that the Assignee:

- (1) is made aware of the Authority's continuing rights under clauses 37.a(1) and 37.a(2); and
- (2) notifies the Authority of the Assignee's contact information and bank account details to which the Authority shall make payment, subject to any reduction made by the Authority in accordance with clauses 37.a(1) and 37.a(2).

d. The provisions of Condition 35 (Payment and Recovery of Sums Due) shall continue to apply in all other respects after the assignment and shall not be amended without the prior approval of the Authority.

### 38. Subcontracting and Prompt Payment

a. Subcontracting any part of the Contract shall not relieve the Contractor of any of the Contractor's obligations,

duties or liabilities under the Contract.

b. Where the Contractor enters into a subcontract, they shall cause a term to be included in such subcontract:

- (1) providing that where the Subcontractor submits an invoice to the Contractor, the Contractor will consider and verify that invoice in a timely fashion;
- (2) providing that the Contractor shall pay the Subcontractor any sums due under such an invoice no later than a period of thirty (30) days from the date on which the Contractor has determined that the invoice is valid and undisputed;
- (3) providing that where the Contractor fails to comply with clause 38.b(1) above, and there is an undue delay in considering and verifying the invoice, that the invoice shall be regarded as valid and undisputed for the purposes of clause 38.b(2) after a reasonable time has passed; and
- (4) requiring the counterparty to that subcontract to include in any subcontract which it awards, provisions having the same effect as clauses 38.b(1) to 38.b(4).

## Termination

### 39. Dispute Resolution

a. The Parties will attempt in good faith to resolve any dispute or claim arising out of or relating to the Contract through negotiations between the respective representatives of the Parties having authority to settle the matter, which attempts may include the use of any alternative dispute resolution procedure on which the Parties may agree.

b. In the event that the dispute or claim is not resolved pursuant to clause 39.39.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this clause 39.39.b shall be governed by the Arbitration Act 1996. For the purposes of the arbitration, the arbitrator shall have the power to make provisional awards pursuant to Section 39 of the Arbitration Act 1996.

c. For the avoidance of doubt, anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential between the Parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise.

### 40. Termination for Insolvency or Corrupt Gifts

#### Insolvency:

a. The Authority may terminate the Contract, without paying compensation to the Contractor, by giving written Notice of such termination to the Contractor at any time after any of the following events:

Where the Contractor is an individual or a firm:

- (1) the application by the individual or, in the case of a firm constituted under English law, any partner of the firm to the court for an interim order pursuant to Section 253 of the Insolvency Act 1986; or
- (2) the court making an interim order pursuant to Section 252 of the Insolvency Act 1986; or
- (3) the individual, the firm or, in the case of a firm constituted under English law, any partner of the firm making a composition or a scheme of arrangement with them or their creditors; or
- (4) the presentation of a petition for bankruptcy order against the individual or, in the case of a firm constituted under English law, any partner of the firm unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
- (5) the court making a bankruptcy order in respect

of the individual or, in the case of a firm constituted under English law, any partner of the firm; or

(6) where the Contractor is either unable to pay their debts as they fall due or has no reasonable prospect of being able to pay debts which are not immediately payable. The Authority shall regard the Contractor as being unable to pay their debts if:

- (a) they have failed to comply with or to set aside a Statutory demand under Section 268 of the Insolvency Act 1986 within twenty-one (21) days of service of the Statutory Demand on them; or
- (b) execution or other process to enforce a debt due under a judgement or order of the court has been returned unsatisfied in whole or in part.

(7) the presentation of a petition for sequestration in relation to the Contractor's estates unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or

(8) the court making an award of sequestration in relation to the Contractor's estates.

Where the Contractor is a company registered in England:

- (9) the presentation of a petition for the appointment of an administrator; unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
- (10) the court making an administration order in relation to the company; or
- (11) the presentation of a petition for the winding-up of the company unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
- (12) the company passing a resolution that the company shall be wound-up; or
- (13) the court making an order that the company shall be wound-up; or
- (14) the appointment of a Receiver or manager or administrative Receiver.

Where the Contractor is a company registered other than in England, events occur or are carried out which, within the jurisdiction to which they are subject, are similar in nature or effect to those specified in clauses 40.a(9) to 40.a(14) inclusive above.

b. Such termination shall be without prejudice to and shall not affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Authority and the Contractor.

#### **Corrupt Gifts:**

c. The Contractor shall not do, and warrants that in entering the Contract they have not done any of the following (hereafter referred to as 'prohibited acts'):

- (1) offer, promise or give to any Crown servant any gift or financial or other advantage of any kind as an inducement or reward;
  - (a) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this or any other Contract with the Crown; or
  - (b) for showing or not showing favour or disfavour to any person in relation to this or any other Contract with the Crown.
- (2) enter into this or any other Contract with the Crown in connection with which commission has been paid or has been agreed to be paid by them or on their behalf, or to their knowledge, unless before the Contract is made particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been

disclosed in writing to the Authority.

d. If the Contractor, their employees, agents or any Subcontractor (or anyone acting on their behalf or any of their employees) does any of the prohibited acts or commits any offence under the Bribery Act 2010 with or without the knowledge or authority of the Contractor in relation to this Contract or any other contract with the Crown, the Authority shall be entitled:

- (1) to terminate the Contract and recover from the Contractor the amount of any loss resulting from the termination;
- (2) to recover from the Contractor the amount or value of any such gift, consideration or commission; and
- (3) to recover from the Contractor any other loss sustained in consequence of any breach of this Condition, where the Contract has not been terminated.

e. In exercising its rights or remedies under this Condition, the Authority shall:

- (1) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the prohibited act;
- (2) give all due consideration, where appropriate, to action other than termination of the Contract, including (without being limited to):
  - (a) requiring the Contractor to procure the termination of a subcontract where the prohibited act is that of a Subcontractor or anyone acting on their behalf;
  - (b) requiring the Contractor to procure the dismissal of an employee (whether their own or that of a Subcontractor or anyone acting on their behalf) where the prohibited act is that of such employee.

f. Recovery action taken against any person in Her Majesty's service shall be without prejudice to any recovery action taken against the Contractor pursuant to this Condition.

#### **41. Termination for Convenience**

a. The Authority shall have the right to terminate the Contract in whole or in part at any time by giving the Contractor at least twenty (20) Business Days written notice (or such other period as may be stated in Schedule 3 (Contract Data Sheet)). Upon expiry of the notice period the Contractor, or relevant part thereof, shall terminate without prejudice to the rights of the parties already accrued up to the date of termination. Where only part of the Contract is being terminated, the Authority and the Contractor shall owe each other no further obligations in respect of the part of the Contract being terminated, but will continue to fulfil their respective obligations on all other parts of the Contract not being terminated.

b. Following the above notification the Authority shall be entitled to exercise any of the following rights in relation to the Contract (or part being terminated) to direct the Contractor to:

- (1) not start work on any element of the Contractor Deliverables not yet started;
- (2) complete in accordance with the Contract the provision of any element of the Contractor Deliverables;
- (3) as soon as may be reasonably practicable take such steps to ensure that the production rate of the Contractor Deliverables is reduced as quickly as possible;
- (4) terminate on the best possible terms any subcontracts in support of the Contractor Deliverables that have not been completed, taking into account any direction given under clauses 41.b(2) and 41.b(3)

of this Condition.

c. Where this Condition applies (and subject always to the Contractor's compliance with any direction given by the Authority under clause 41.b):

(1) The Authority shall take over from the Contractor at a fair and reasonable price all unused and undamaged materiel and any Contractor Deliverables in the course of manufacture that are:

- (a) in the possession of the Contractor at the date of termination; and
- (b) provided by or supplied to the Contractor for the performance of the Contract,

except such materiel and Contractor Deliverables in the course of manufacture as the Contractor shall, with the agreement of the Authority, choose to retain;

(2) the Contractor shall deliver to the Authority within an agreed period, or in absence of such agreement within a period as the Authority may specify, a list of:

- (a) all such unused and undamaged materiel; and
- (b) Contractor Deliverables in the course of manufacture,

that are liable to be taken over by, or previously belonging to the Authority, and shall deliver such materiel and Contractor Deliverables in accordance with the directions of the Authority;

(3) in respect of Services, the Authority shall pay the Contractor fair and reasonable prices for each Service performed, or partially performed, in accordance with the Contract.

d. The Authority shall (subject to clause 41.e below and to the Contractor's compliance with any direction given by the Authority in clause 41.b above) indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract, subject to:

- (1) the Contractor taking all reasonable steps to mitigate such loss; and
- (2) the Contractor submitting a fully itemised and costed list of such loss, with supporting evidence, reasonably and actually incurred by the Contractor as a result of the termination of the Contract or relevant part.

e. The Authority's total liability under the provisions of this Condition shall be limited to the total price of the Contractor Deliverables payable under the contract (or relevant part), including any sums paid, due or becoming due to the Contractor at the date of termination.

f. The Contractor shall include in any subcontract over £250,000 which it may enter into for the purpose of the Contract, the right to terminate the subcontract under the terms of clauses 41.a to 41.e except that:

- (1) the name of the Contractor shall be substituted for the Authority except in clause 41.c(1);
- (2) the notice period for termination shall be as specified in the subcontract, or if no period is specified twenty (20) Business Days; and
- (3) the Contractor's right to terminate the subcontract shall not be exercised unless the main Contract, or relevant part, has been terminated by the Authority in accordance with the provisions of this Condition 41.

g. Claims for payment under this Condition shall be submitted in accordance with the Authority's direction.

#### 42. Material Breach

a. In addition to any other rights and remedies, the Authority shall have the right to terminate the Contract (in

whole or in part) with immediate effect by giving written Notice to the Contractor where the Contractor is in material breach of their obligations under the Contract.

b. Where the Authority has terminated the Contract under clause 42.a the Authority shall have the right to claim such damages as may have been sustained as a result of the Contractor's material breach of the Contract, including but not limited to any costs and expenses incurred by the Authority in:

- (1) carrying out any work that may be required to make the Contractor Deliverables comply with the Contract; or
- (2) obtaining the Contractor Deliverable in substitution from another supplier.

#### 43. Consequences of Termination

The termination of the Contract, however arising, shall be without prejudice to the rights and duties of either Party accrued prior to termination. The Conditions that expressly or by implication have effect after termination shall continue to be enforceable even after termination.

### Additional Conditions

#### 44. The project specific DEFCONS and DEFCON SC variants that apply to the Contract are:

DEFCON 16 (Edn 06/21) - Repair and Maintenance Information.

DEFCON 21 (Edn 06/21) - Retention of Records.

DEFCON 23 (Edn 06/21) (SC2) - Special Jigs, Tooling and Test Equipment.

DEFCON 76 (Edn 06/21) (SC2) - Contractor's Personnel at Government Establishments.

DEFCON 82 (Edn 06/21) (SC2) – Special Procedure for Initial Spares.

DEFCON 90 (Edn 06/21) – Copyright.

DEFCON 117 (Edn 11/17) (SC2) - Supply of Information for NATO Codification Purposes.

DEFCON 130 (Edn 11/21) (SC2) – Packaging for Explosives

DEFCON 532B (Edn 09/21) - Protection of Personal Data (Where Personal Data is being processed on behalf of the Authority).

DEFCON 611 (Edn 02/16) (SC2) - Issued Property.

DEFCON 624 (Edn 11/17) (SC2) – Use of Asbestos

DEFCON 637 (Edn 05/17) - Defect Investigation and Liability.

DEFCON 647 (Edn 05/21) (SC2) – Financial Management Information

DEFCON 649 (Edn 12/21) (SC2) - Vesting.

DEFCON 658 (Edn 09/21) (SC2) – Cyber.

Note: for the purposes of DEFCON 658 - Cyber, the Cyber Risk Profile is detailed at Schedule 15 to the terms and condition of this contract.

DEFCON 660 (Edn 12/15) - Official-Sensitive Security Requirements.

DEFCON 670 (Edn 11/17) (SC2) - Tax Compliance.

DEFCON 694 (Edn 07/21) (SC2) - Accounting for Property of The Authority

**45. The special Conditions that apply to the Contract are:**

- 45.1 Integrated Logistic Support
- 45.2 IFRS16 (International Financial Regulation Standards)
- 45.3 Cyber Security
- 45.4 Additional Buys
- 45.5 Safety
- 45.6 Testing
- 45.7 Supply of Articles and Parts for Use in Repair
- 45.8 Builds and Specification Standard
- 45.9 Beyond Economical Repair
- 45.10 Turnaround Times
- 45.11 Repair and Delivery of Items
- 45.12 Warranty
- 45.13 Post Design Support
- 45.14 Delivery Process for Deliveries to LCS Managed Depots
- 45.15 Modern Slavery
- 45.16 Government Quality Assurance Representative
- 45.17 Transportation of Arms, Ammunition and Explosives
- 45.18 Changes to Manufacturing and Inspection Process
- 45.19 Defects and Irregularities in Contract Deliverables
- 45.20 Social Value
- 46 Limitation of Contractor's Liability (SC2)
- 47 The processes that apply to the Contract are: N/A

**Clause 45 - The Special Conditions that apply to this contract**

45	The Special Conditions that apply to this contract are: .....	2
45.1	Integrated Logistic Support.....	2
45.2	IFRS16 (International Financial Regulation Standards) .....	2
45.3	Cyber Security.....	2
45.4	Additional Buys.....	2
45.5	Safety .....	3
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45.16	Government Quality Assurance Representative.....	12
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45.18	Changes to Manufacturing and Inspection Process .....	13
45.19	Defects and Irregularities in Contract Deliverables.....	13
45.20	Social Value.....	14



**45 The Special Conditions that apply to this contract are:****45.1 Integrated Logistic Support**

45.1.1 The Contractor is required to provide updated versions of the ILS documentation provided against line items 42 to 55 as detailed in Schedule 2 – Schedule of Requirements on an annual basis where any information contained within the document has changed. Where no changes have occurred to the information within the document, an updated document is not required to be delivered to the Authority. All updates throughout the life of the contract are at Nil cost to the Authority.

**45.2 IFRS16 (International Financial Regulation Standards)**

45.2.1 The Contractor must notify the Authority as soon as reasonably possible, if at any point during the term of the contract there is a need for them to acquire any asset(s), or hire equipment, machinery or buildings/floor space (for example) as defined by IFRS16, in order to fulfil the obligations and deliverable(s) of the contract.

**45.3 Cyber Security**

45.3.1 The Authority requires the Contractor to maintain Cyber Essentials Certification in relation to this requirement for the duration of the Contract in conjunction with DEFCON 658, DEFSTAN 05-138, and will be measured as a Deliverable on the Contract against line item 57 in Schedule 2 – Schedule of Requirements.

**45.4 Additional Buys**

45.4.1 The Contractor hereby grants to the Authority the irrevocable option to procure additional Systems and spares as detailed in Schedule 13 – Additional Buys in accordance with the Terms and Conditions set out in the Contract, it being agreed that the Authority has no obligation to procure any additional buys.

45.4.2 Should the Authority decide to exercise any of these options then it will do so by servicing a Purchase order through CP&F stating the quantity, delivery date and price using the information within Schedule 13 – Additional Buys applicable at the time the Purchase Order is raised.

45.4.3 The Authority has no obligation to exercise the above options.

- 45.4.4 The Authority shall not be liable for any advance commitment that the Contractor may enter in to in the pursuance of the Options referred to.

## 45.5 Safety

- 45.5.1 The contractor shall ensure that the Equipment is safe to operate and maintain and that the requirements stipulated in the Contract for the safety of the Equipment are met in full. In performing the Contract, the Contractor shall comply with his statutory duties and obligations relating to safety and shall be responsible for ensuring that none of the Contract requirements cause him to be in breach of any statutory duty or obligation relating to safety.
- 45.5.2 If after the contract is made, it appears that any specification or other Contract Condition agreed between the Authority and the Contractor may render the Contractor in breach of any statutory duty or obligation relating to safety, he shall immediately draw the fact to the Authority's attention.
- 45.5.3 The Authority may, without any prejudice to any of its rights under the Contract, require the Contractor to vary each such Condition at his own expense in a manner acceptable to the Authority and which will not render the Contractor in breach of any statutory duty or obligation relating to safety. Nothing in the Contract, or in any other document created or signed on behalf of the Authority in connection with it, shall constitute a written undertaking for the purposes of Section 6(8) of the Health and Safety at Work Act 1974 relieving the Contractor of any of his duties under section 6 of the Act.
- 45.5.4 The Authority shall be entitled to reject the Equipment if any of the safety requirements set out in the contract are not met in full. The Contractor shall provide access to records, including Sub-contractor records, for Contract purposes, to enable the MOD-appointed Independent Safety Auditor to carry out safety audits and other assessment activities to meet MOD safety requirements.

## 45.6 Testing

- 45.6.1 The Authority reserves the right to test all repaired Articles. All testing shall be in accordance with that by the relevant specification.

#### **45.7 Supply of Articles and Parts for use in repair**

- 45.7.1 All spares and replacement parts supplied by the Contractor shall be at least to the original equipment manufacturers current specification and are to be purchased from approved suppliers.
- 45.7.2 Articles must not be removed from the premises to which they have been allocated without the prior approval of the Supply Chain Manager, except where it is necessary for the performance of sub-contracted work.

#### **45.8 Builds and Specification Standard**

- 45.8.1 The Contractor shall carry out the work specified in the Schedule of Requirements SOR (Schedule 2) in accordance with the Terms and Conditions of the Contract.
- 45.8.2 All Articles repaired shall be returned to the Authority configured in accordance with the Complete Equipment Schedule (CES) as contained within the Equipment Breakdown Structure (EBS) at Schedule 18.

#### **45.9 Beyond Economic Repair (BER)**

- 45.9.1 The Contractor shall promptly submit to the Authority's Supply Chain Manager full details of any article considered Beyond Economic Repair. The Contractor shall then await further instructions from the Authority and if it is decided that the article should be repaired, the Contractor shall be authorised by the Authority accordingly.
- 45.9.2 An article shall be BER if the costs of repair exceed 75% of its current purchase value.
- 45.9.3 Should any article be found to be BER, the Authority shall confirm if the Article is to be returned complete to the depot or authorise its destruction.

#### **45.10 Repair Turnaround times (RTAT)**

45.10.1 Repair reports (inspection) for items are to be delivered to the Supply Chain Manager within 14 days of the post design support form (Schedule 12 Annex A) being received from the Authority.

45.10.2 Repair of the Articles and delivery must be completed within RTAT stated on the post design support form (Schedule 12 Annex A).

45.10.3 Any delay to the order by the contractor must be formally communicated to the Authority's representative in Box 2 of DEFFORM 111.

#### **45.11 Repair and Delivery of Items**

45.11.1 All work to be carried out under line 59 of Schedule 2 – Schedule of Requirements shall be authorised and conducted in accordance with this Condition and Condition 45.12.

45.11.2 Systems for repair shall be issued to the Contractor as Issued Property in accordance with DEFCON 611.

45.11.3 The Contractor shall be responsible for the inspection and repair of the articles arising from non-warranty accident, misuse or negligence on the part of the Authority. The Contractor and Authority will follow the post design support process as laid out in Schedule 12 – Post Design and Support and Schedule 12 Annex A – Post Design and Support Form.

45.11.4 All articles returned to the contractor shall undergo an initial inspection. The repair report shall take no longer than 14 days. All activity shall be included in the repair report, including the level of repair. The Contractor will seek written approval from the Supply Chain Manager to proceed with the repair.

45.11.5 The Contractor shall maintain records of the failure causes of returned items and in accordance with AQAP 2110 (NATO Quality Assurance Requirements for Design Development and Production) failure causes shall be evaluated for recurring defects. A Corrective Action Report will be provided to the MOD for recurring failures. If any defect proves to be common to the system design or manufacturing process, the Contractor shall modify all systems that have already been supplied to the Authority and all future systems to be supplied. Such modifications shall be at no cost to the Authority. Turn-around times for any modifications shall be agreed with the Authority.

## 45.12 Warranty

### 45.12.1 General

45.12.1.1 The Parts and Labour Warranty shall guarantee each Article against failure under the terms stated below, for Twelve (12) months. The period of Warranty for each Article shall commence from the date on which the Article is issued from MOD Donnington to the User Unit or 12 (twelve) months after the Contractor's delivery of the Article to MOD Donnington, whichever is sooner. This Warranty is given to the Authority or its authorised representative, hereinafter referred to as the Authority. The Warranty provides full parts and labour coverage for design, workmanship or material failure of any part of the Article supplied as original equipment.

45.12.1.2 The Contractor undertakes that the Articles supplied against the Contract including all components supplied thereon by the Contractor as original equipment will be free from defect in design, materials and workmanship under normal use and service. The Contractor's obligations under this Warranty being limited to repairing or replacing any component or assembly, which proves to be defective. The Warranty provides full parts and labour cover against any failure of any part of the Article supplied as original equipment.

### 45.12.2 Exclusions

45.12.2.1 This Warranty shall not apply in respect of damage caused by:

45.12.2.1.1 Any use or maintenance of the Article not in accordance with the instructions described in the Technical documentation and training provided by the Contractor;

45.12.2.1.2 Any use or maintenance of the Article performed by non-authorised personnel;

45.12.2.1.3 War and peacekeeping operations resulting in battle damage;

45.12.2.1.4 Misuse or neglect; and

45.12.2.1.5 Any alterations, modifications or attachments made to the Article without the Contractor's approval

45.12.2.2 The Contractor shall not be liable under this Warranty to carry out:

45.12.2.2.1 Normal maintenance services and adjustments; and

45.12.2.2.2 Repairs to remedy fair wear and tear to any component.

#### 45.12.3Applicable Countries

45.12.3.1 The Parts and Labour Warranty applies worldwide

#### 45.12.4Warranty Repairs

45.12.4.1 Articles for repair are to be submitted to the Contractor once the repair has been verified as an acceptable warranty claim. The dismantling and/or refitting of parts to return the Article to a serviceable condition shall be carried out by the Contractor at no charge to the Authority. This is to include any necessary cleaning, testing and certification required by the repair.

45.12.4.2 An Article or part present to a Contractor for Warranty work shall be accompanied by Schedule 12 Annex A (Post Design and Support Form) with a completed part A indicating that the repair is a warranty repair. The Post Design and Support Form shall be submitted to the Contractor within 90 (ninety) days of the warranty event.

45.12.4.3 The Contractor shall complete the warranty work within the turnaround times specified in Schedule 12 Annex A - Post Design and Support Form for the appropriate level of repair.

45.12.4.4 In the event that warranty is disputed or rejected by the Contractor, the matter shall be resolved between the Contractor and the Dismounted Close Combat (DCC) Team. The Contractor shall inform the Project Manager of such disputes in writing within 24 (Twenty-four) hours of the dispute being identified.

45.12.4.5 Any Warranty defect identified by the Authority in material or workmanship must be communicated to the Contractor within 90 (ninety) days after date of recorded failure. During operational deployment reasonable endeavours will be made by the Authority to communicate warranty information within 90 (ninety) days of the recorded failure.

#### 45.12.5 Replaced Part Warranty

- 45.12.5.1 Should any component fail within the Warranty Period as a result of a manufacturing or material defect, the Contractor shall undertake, at no cost to the Authority, to repair or replace the component free of charge.
- 45.12.5.2 Any part replaced by the Contractor free of charge to the Authority under this Warranty, or any approved repairs, shall be guaranteed for 12 (Twelve) months from the date that the replacement part is fitted in the Article.

#### 45.12.6 Maintenance

- 45.12.6.1 Where the Authority carried out routine maintenance or servicing, this will not invalidate the Warranty provided that the maintenance procedures comply with the Technical Manuals and relevant training provided by the Contractor.

#### 45.12.7 Warranty Liability

- 45.12.7.1 Liability under this Warranty is limited, at the discretion of the Contractor, to the replacement or repair free of charge of such parts that are judged to be defective under the terms of this Warranty provided that:
- 45.12.7.1.1 Such defects are repaired by the Contractor; and
- 45.12.7.1.2 Articles have been stored in accordance with the Contractor's recommended maintenance procedures; and
- 45.12.7.1.3 All work is carried out in accordance with Technical Documentation & Training provided by the Contractor and generally accepted engineering practices;
- 45.12.7.1.4 Only parts approved by the Contractor have been used to repair and maintain the Article, except where common items have been fitted that are the same or equivalent technical specification as the original Contractor-supplied part and have been NATO codified as such;
- 45.12.7.1.5 Any identity numbers, marks, warning or operating labels have not been altered, displaced or removed unless with the Contractors consent.

45.12.7.2 The Contractor shall not be responsible for the quality of any work carried out in the Authority's workshop except that the Contractor remains responsible for the quality of spares and the completeness and accuracy of the Technical Documentation as supplied to the Authority.

45.12.7.3 For Warranty repairs carried out in the Authority's workshops replaced warranty parts become the property of the Contractor after a claim is accepted. Parts replaced by the Authority will be held for 90 (ninety) days for inspection by the Contractor, after which the Authority may dispose of these parts and the cost of such disposal will be charged to the Contractor.

#### 45.12.8 General Provisions

45.12.8.1 Any dispute hereunder shall be dealt with in accordance with Condition 39 – Dispute Resolution.

45.12.8.2 This Warranty shall be governed by and construed in accordance with the laws of England.

45.12.8.3 This Warranty shall be entirely without prejudice to the Authority's rights and remedies under the Contract or otherwise including (without limitation) rights and remedies relating to terms and conditions implied by law.

#### 45.13 Post Design Support

45.13.1 Post Design Support is task structured and the Contractor shall submit Firm Price Quotations for each task, using the PDS Tasking pro-forma at Annex A to Schedule 12 - Post Design Support utilising the agreed rates in Schedule 12 – Post Design Support.

45.13.2 The processes that apply to this Contract are:

45.13.2.1 Post Design Services (PDS) Process

45.13.2.1.1 The Authority reserves the right to request Post Design Services (PDS) in support of the Project Vanisher systems for a period of five years from date of contract.

45.13.2.1.2 The PDS tasking process is detailed in Schedule 12 and the form for this process is in Annex A to Schedule 12.



45.13.2.2 Repair Process

45.13.2.2.1 The Repair process shall utilise the Post Design Services (PDS) Process detailed at Condition 45.13.2.1.

**45.14 Delivery Process for deliveries to LCS Managed Depots**

45.14.1 The Contractor and or any of its subcontractors shall comply with the requirements set out in the Logistics Commodities Services Transformation Authority Managed Material Supplier Manual (Version 2 – LDOC/CMO/V2.0 dated 28 Jun 19 – known as the “LCST Supplier Manual) in respect of all goods which are:

45.14.1.1 supplied by the Contractor or any of its subcontractors under this contract; and

45.14.1.2 which are to be delivered to depots which are managed and/or operated by Leidos Europe Ltd or its subcontractors pursuant to the Logistics Commodities and Services (Transformation) contract (Contract No. [LCST/0001]) (“LCS(T) Managed Depots”).

**45.15 Modern Slavery**

45.15.1 The Supplier shall, and procure that each of its Sub-Contractors shall, comply with:

45.15.1.1 the Modern Slavery Act 2015; and

45.15.1.2 the Authority’s anti-slavery policy as provided to the Supplier from time to time.

45.15.2 The Supplier shall:

45.15.2.1 implement due diligence procedures for its Sub-Contractors and other participants in its supply chains, to ensure that there is no slavery or trafficking in its supply chains;

45.15.2.2 respond promptly to all slavery and trafficking due diligence questionnaires issued to it by the Authority from time to time and shall ensure that its responses to all such questionnaires are complete and accurate;

- 45.15.2.3 prepare and deliver to the Authority each year, an annual slavery and trafficking report setting out the steps it has taken to ensure that slavery and trafficking is not taking place in any of its supply chains or in any part of its business;
- 45.15.2.4 maintain a complete set of records to trace the supply chain of all Services provided to the Authority regarding the Contract; and
- 45.15.2.5 implement a system of training for its employees to ensure compliance with the Slavery Act.

45.15.3 The Supplier represents, warrants and undertakes throughout the Term that:

- 45.15.3.1 it conducts its business in a manner consistent with all applicable laws, regulations and codes including the Slavery Act and all analogous legislation in place in any part of the world;
- 45.15.3.2 its responses to all slavery and trafficking due diligence questionnaires issued to it by the Authority from time to time are complete and accurate; and
- 45.15.3.3 neither the Supplier nor any of its Sub-Contractors, nor any other persons associated with it: has been convicted of any offence involving slavery and trafficking; or
- 45.15.3.3.1 has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence regarding slavery and trafficking.

45.15.4 The Supplier shall notify the Authority as soon as it becomes aware of:

- 45.15.4.1 any breach, or potential breach, of the Anti-Slavery Policy; or
- 45.15.4.2 any actual or suspected slavery or trafficking in a supply chain which relates to the Contract.

45.15.5 If the Supplier notifies the Authority pursuant to paragraph 45.15.4 of this condition, it shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with the Contract.

45.15.6 If the Supplier is in Default under paragraphs 45.15.3 of this condition the Authority may by notice:

45.15.6.1 require the Supplier to remove from performance of the Contract any Sub-Contractor, Staff or other persons associated with it whose acts or omissions have caused the Default; or

45.15.6.2 immediately terminate the Contract.

#### **45.16 Government Quality Assurance Representative**

45.16.1 The Authority may choose to appoint an independent Government Quality Assurance Representative to undertake Quality Assurance activities on its behalf. In the event that an independent Quality Assurance Representative is appointed, the Representative will be identified to the Contractor following contract award.

45.16.2 The Authority or the Authority's appointed Government Quality Assurance Representative shall, by giving reasonable notice, have the right to entry into the Contractor's works or manufacturing plant, and access to any facility currently being used for production, inspection and storage of materiel or components in connection with the item being manufactured as per the Schedule of Requirements to the Contract. The right of entry shall extend to the premises of all Sub-Contractors manufacturing or supplying materials or components. The Contractor shall include a clause in all sub-contracts that extends the right of access of the Authority's Government Quality Assurance Representative or the Authority's appointed Government Quality Assurance Representative to the Sub-Contractor's premises in connection with the items being manufactured.

#### **45.17 Transportation of Arms, Ammunition and Explosives**

45.17.1 In the event that any Contractor Deliverables under this Contract are rejected for any reason, or in any other instance that the Contractor is required to take possession of the Contractor Deliverables to this Contract from a MoD establishment, the Contractor Deliverables shall be considered to be Arms, Ammunition and Explosives in transit and shall be treated as if they are classed within Section 5 of the Firearms Act 1968.

45.17.2 Any Contractor Deliverables transported from a MoD establishment by the Contractor shall be afforded reasonable protection from loss or theft when being transported. The individuals responsible for transporting the Contractor Deliverables shall ensure that the packaging and labelling is not visible during transport. The Contractor shall ensure that any Sub-Contractor responsible for the transportation of the Contractor Deliverables within the United Kingdom have the appropriate clearances in accordance with Section 5 of the Firearms Act 1968. The Contractor shall ensure that the individuals transporting the Contractor Deliverables hold a valid security clearance appropriate to the items being transported.

#### **45.18 Changes to Manufacturing and Inspection Process**

45.18.1 The Contractor shall inform the Authority no later than 3 months in advance of any change to the build standard, manufacturing or inspection process being implemented for any Contractor Deliverable within the scope of the Contract. The Contractor shall provide information and evidence of any such change to support assessment of the impact on the Contractor Deliverables. The Authority's Quality Assurance Representative shall be satisfied that any such change will not cause any detrimental effects on the performance of the Contractor Deliverables.

45.18.2 In the event that it is identified that any such change to the manufacturing or inspection process materially impacts the performance of the Contractor Deliverables, the Authority reserves the right to terminate the Contract.

#### **45.19 Defects and Irregularities in Contract Deliverables**

45.19.1 Any irregularity or defect which is detected and could adversely affect proper functioning, handling, safety or storage of the Contractor Deliverables being supplied shall be grounds for Rejection of the Lot or Lots in question in accordance with Condition 29 to the Contract.

45.19.2 Where a consignment is rejected, the Contractor shall rectify the non-compliance to the satisfaction of the Authority at no extra cost and shall deliver the rectified Contractor Deliverables in accordance with Schedule 8 and 9 to the Contract.

#### 45.20 **Social Value**

45.20.1 The Contractor shall provide the Authority with quarterly updates on the progress towards the 14 (fourteen) social value objectives, detailed at Schedule [TBC]. The updates shall be provided electronically in a Microsoft Office 2016 compatible format to the Commercial Officer detailed in Schedule 3 Annex A DEFFORM 111. The update shall detail whether the Contractor is on track to meet its objectives or, where there is likely to be a delay, how the Contractor intends to rectify any delay.

Clause 46 - Limitation of Contractor’s Liability (SC2)

Contents

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## 46. LIMITATIONS ON LIABILITY

### Definitions

46.1 In this Condition 46 the following words and expressions shall have the meanings given to them, except where the context requires a different meaning:

“Charges” means any of the charges for the provision of the Services, Contractor Deliverables and the performance of any of the Contractor’s other obligations under this Contract, as determined in accordance with this Contract;

“Data Protection Legislation” means all applicable Law in force from time to time in the UK, including but not limited to:

- i) UK GDPR;
- ii) DPA 2018; and
- iii) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426 as amended, each to the extent that it relates to the processing of personal data and privacy;

“Default” means any material breach of the obligations of the relevant Party (including fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party, its employees, servants, agents or sub-contractors in connection with or in relation to the subject matter of this Contract and in respect of which such Party is liable to the other. In no event shall failure or delay in the delivery of and Authority responsibility or an activity to be carried out by the Authority or its representatives in accordance with the Contract be considered Default;

“DPA 2018” means the Data Protection Act 2018;

“Law” means any applicable law, subordinate legislation within the meaning of section 21 (1) of the Interpretation Act 1978, regulation, order, regulatory policy, mandatory guidance or code of practice judgement of a relevant court of law, or directives or requirements of any regulatory body, delegated or subordinate legislation or notice of any regulatory body;

“Service Credits” means the amount that the Contractor shall credit or pay to the Authority in the event of failure by the Contractor to meet the agreed Service Levels as set out/referred to in the Contract;

“Term” means the period commencing on the date on which this Contract takes effect and ending on the expiry of 5 years or on earlier termination of this Contract.

“UK GDPR” means the General Data Protection Regulation (Regulation (EU) 2016/679) as retained in UK law by the EU (Withdrawal) Act 2018 and the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019;

## Unlimited liabilities

- 46.2 Neither Party limits its liability for:
- 46.2.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);
  - 46.2.2 fraud or fraudulent misrepresentation by it or its employees;
  - 46.2.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
  - 46.2.4 any liability to the extent it cannot be limited or excluded by law.
- 46.3 The financial caps on liability set out in Clauses 46.4 and 46.5 below shall not apply to the following:
- 46.3.1 for any indemnity given by the Contractor to the Authority under this Contract including but not limited to;
    - 46.3.1.1 the Contractor's indemnity in relation to DEFCON 91 (Intellectual Property in Software) and condition 33 (Third Party IP – Rights and Restrictions);
  - 46.3.2 breach by the Contractor of DEFCON 532B and Data Protection Legislation.
  - 46.3.3 to the extent it arises as a result of a Default by either Party, any fine or penalty incurred by the other Party pursuant to Law and any costs incurred by such other Party in defending the proceedings which result in such fine or penalty.

## Financial limits

- 46.4 Subject to Clauses 46.2 and 46.3 and to the maximum extent permitted by Law:
- 46.4.1 throughout the Term, the Contractor's total liability in respect of losses that are caused by Defaults of the Contractor shall in no event exceed:
    - 46.4.1.1 in respect of DEFCON 76 (SC2) [REDACTED] in aggregate;
    - 46.4.1.2 In respect of condition 42b [REDACTED] in aggregate;
    - 46.4.1.3 in respect of DEFCON 611 (SC2) [REDACTED] in aggregate; and
    - 46.4.1.4 in respect of condition 27d [REDACTED] in aggregate;
  - 46.4.2 without limiting Clause 46.4.1 and subject always to Clauses 46.2, 46.3 and 46.4.3, the Contractor's total liability throughout the Term in respect of all other liabilities whether in contract, in tort (including negligence), arising under warranty, under statute or otherwise under or in connection with this Contract shall be [REDACTED] in aggregate.
  - 46.4.3 on the exercise of any and, where more than one, each option period or agreed extension to the Term, the limitation of the Contractor's total liability (in aggregate) set out in Clauses



46.4.1 and 46.4.2 above shall be fully replenished such that on and from each such exercise or extension of the Term, the Authority shall be able to claim up to the full value of the limitation set out in Clauses 46.4.1 and 46.4.2 of this Contract.

- 46.5 Subject to Clauses 46.2, 46.3, and 46.6, and to the maximum extent permitted by Law the Authority's total liability (in aggregate) whether in contract, in tort (including negligence), under warranty, under statute or otherwise under or in connection with this Contract shall in respect of all liabilities (taken together) be limited to the Charges paid by the Authority in the relevant Contract Year in respect of any and all claims in that Contract Year.
- 46.6 Clause 46.5 shall not exclude or limit the Contractor's right under this Contract to claim for the Charges.

### **Consequential loss**

- 46.7 Subject to Clauses 46.2, 46.3 and 46.8, neither Party shall be liable to the other Party or to any third party, whether in contract (including under any warranty), in tort (including negligence), under statute or otherwise for or in respect of:
- 46.7.1 indirect loss or damage;
  - 46.7.2 special loss or damage;
  - 46.7.3 consequential loss or damage;
  - 46.7.4 loss of profits (whether direct or indirect);
  - 46.7.5 loss of turnover (whether direct or indirect);
  - 46.7.6 loss of business opportunities (whether direct or indirect); or
  - 46.7.7 damage to goodwill (whether direct or indirect),
- even if that Party was aware of the possibility of such loss or damage to the other Party.
- 46.8 The provisions of Clause 46.7 shall not restrict the Authority's ability to recover any of the following losses incurred by the Authority to the extent that they arise as a result of a Default by the Contractor:
- 46.8.1 any additional operational and administrative costs and expenses arising from the Contractor's Default, including any costs paid or payable by the Authority:
    - 46.8.1.1 to any third party;
    - 46.8.1.2 for putting in place workarounds for the Contractor Deliverables and other deliverables that are reliant on the Contractor Deliverables; and
    - 46.8.1.3 relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
  - 46.8.2 any or all wasted expenditure and losses incurred by the Authority arising from the Contractor's Default, including wasted management time;

- 46.8.3 the additional cost of procuring and maintaining in place transitional assistance and replacement deliverables for the remainder of the Term and any option period or agreed extension to the Term (including legal and other consultants' fees, re-procurement project costs, other expenses associated with such exercise and any increase in the fees for the replacement services over and above the Contract Price that would have been payable for the relevant Contractor Deliverables);
- 46.8.4 any losses arising in connection with the loss, destruction, corruption, inaccuracy or degradation of Authority data, or other data or software, including, to the extent the Authority data, other data or software can be recovered or reconstituted, the fees, costs and expenses of reconstituting such Authority data, data or software;
- 46.8.5 damage to the Authority's physical property and tangible assets, including damage under DEFCONs 76 (SC2) and 611 (SC2);
- 46.8.6 costs, expenses and charges arising from, or any damages, account of profits or other award made for, infringement of any third-party Intellectual Property Rights or breach of any obligations of confidence;
- 46.8.7 any additional costs incurred by the Authority in relation to the Authority's contracts with a third party (including any compensation or interest paid to a third party by the Authority) as a result of the Default (including the extension or replacement of such contracts);
- 46.8.8 any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty; or
- 46.8.9 any savings, discounts or price reductions during the Term and any option period or agreed extension to the Term committed to by the Contractor pursuant to this Contract.

## **Invalidity**

- 46.9 If any limitation or provision contained or expressly referred to in this Clause 46 is held to be invalid under any Law, it will be deemed to be omitted to that extent, and if any Party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this Clause 46.

## **Third party claims or losses**

- 46.10 Without prejudice to any other rights or remedies the Authority may have under this Contract (including but not limited to any indemnity claim under DEFCONs 91 and condition 33 or at Law), the Authority shall be entitled to make a claim under this Contract against the Contractor in respect of any losses incurred by the Authority which arise out of a claim made against the Authority by a third party under any contract with that third party provided that such third party claim:
  - 46.10.1 arises naturally and ordinarily as a result of the Contractor's failure to provide the Contractor Deliverables or failure to perform any of its obligations under this Contract; and

- 46.10.2 is a type of claim or loss that would have been recoverable under this Contract if the third party were a party to this Contract (whether as the Authority or the Contractor), such claim to be construed as direct losses for the purpose of this Contract.

**No double recovery**

- 46.11 Neither Party shall be entitled to employ such rights and remedies available to it so as to seek to recover more than once in respect of the same loss, but the Authority shall be entitled to use (singly or together) such rights and remedies available to the Authority so as to recover the full extent of any recoverable losses suffered or incurred, including any remedies the Authority may have against any guarantor.

**SCHEDULE 1****Procurement of Breaching Shotgun – Project Vanisher  
Definitions of Contract**

<b>Articles</b>	means the Contractor Deliverables (goods and/or the services), including Packaging (and Certificate(s) of Conformity and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Contract in accordance with Schedule 2 (Schedule of Requirements), but excluding incidentals outside Schedule 2 (Schedule of Requirements) such as progress reports. <b>(This definition only applies when DEFCONs are added to these Conditions);</b>
<b>Authority</b>	means the Secretary of State for Defence acting on behalf of the Crown;
<b>Authority's Representative(s)</b>	shall be those person(s) defined in Schedule 3 (Contract Data Sheet) who will act as the Authority's Representative(s) in connection with the Contract. Where the term "Authority's Representative(s)" in the Conditions is immediately followed by a functional description in brackets, the appropriate Authority's Representative(s) shall be the designated person(s) for the purposes of condition 7;
<b>Business Day</b>	means 09:00 to 17:00 Monday to Friday, excluding public and statutory holidays;
<b>Central Government Body</b>	a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: <ul style="list-style-type: none"> <li>a. Government Department;</li> <li>b. Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</li> <li>c. Non-Ministerial Department; or</li> <li>d. Executive Agency;</li> </ul>
<b>Collect</b>	means pick up the Contractor Deliverables from the Consignor. This shall include loading, and any other specific arrangements, agreed in accordance with clause 28.c and Collected and Collection shall be construed accordingly;
<b>Commercial Packaging</b>	means commercial Packaging for military use as described in Def Stan 81-041 (Part 1)
<b>Conditions</b>	means the terms and conditions set out in this document;
<b>Consignee</b>	means that part of the Authority identified in Schedule 3 (Contract Data Sheet) to whom the Contractor Deliverables are to be Delivered or on whose behalf they are to be Collected at the address specified in Schedule 3 (Contract Data Sheet) or such other part of the Authority as may be instructed by the Authority by means of a Diversion Order;
<b>Consignor</b>	means the name and address specified in Schedule 3 (Contract Data Sheet) from whom the Contractor Deliverables will be dispatched or Collected;
<b>Contract</b>	means the Contract including its Schedules and any amendments agreed by the Parties in accordance with condition 6 (Formal Amendments to the Contract);
<b>Contract Price</b>	means the amount set out in Schedule 2 (Schedule of Requirements) to be paid (inclusive of Packaging and exclusive of any applicable VAT) by the Authority to the Contractor, for the full and proper performance by the Contractor of its obligations under the Contract.
<b>Contractor</b>	means the person who, by the Contract, undertakes to supply the Contractor Deliverables, for the Authority as is provided by the Contract. Where the Contractor is an individual or a partnership, the expression shall include the personal representatives of the individual or of the partners, as the case may be, and the expression shall also include any person to whom the benefit of the Contract may be assigned by the Contractor with the consent of the Authority;
<b>Contractor Commercially Sensitive Information</b>	means the Information listed in the completed Schedule 5 (Contractor's Commercially Sensitive Information Form), which is Information notified by the Contractor to the Authority, which is acknowledged by the Authority as being commercially sensitive;

<b>Contractor Deliverables</b>	means the goods and/or the services, including Packaging (and Certificate(s) of Conformity and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Contract;
<b>Control</b>	means the power of a person to secure that the affairs of the Contractor are conducted in accordance with the wishes of that person: <ul style="list-style-type: none"> <li>a. by means of the holding of shares, or the possession of voting powers in, or in relation to, the Contractor; or</li> <li>b. by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating the Contractor;</li> </ul> and a change of Control occurs if a person who Controls the Contractor ceases to do so or if another person acquires Control of the Contractor;
<b>CPET</b>	means the UK Government's Central Point of Expertise on Timber, which provides a free telephone helpline and website to support implementation of the UK Government timber procurement policy;
<b>Crown Use</b>	in relation to a patent means the doing of anything by virtue of Sections 55 to 57 of the Patents Act 1977 which otherwise would be an infringement of the patent and in relation to a Registered Design has the meaning given in paragraph 2A(6) of the First Schedule to the Registered Designs Act 1949;
<b>Dangerous Goods</b>	means those substances, preparations and articles that are capable of posing a risk to health, safety, property or the environment which are prohibited by regulation, or classified and authorised only under the conditions prescribed by the: <ul style="list-style-type: none"> <li>a. Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 (CDG) (as amended 2011);</li> <li>b. European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR);</li> <li>c. Regulations Concerning the International Carriage of Dangerous Goods by Rail (RID);</li> <li>d. International Maritime Dangerous Goods (IMDG) Code;</li> <li>e. International Civil Aviation Organisation (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air;</li> <li>f. International Air Transport Association (IATA) Dangerous Goods Regulations.</li> </ul>
<b>DBS Finance</b>	means Defence Business Services Finance, at the address stated in Schedule 3 (Contract Data Sheet);
<b>DEFFORM</b>	means the MOD DEFFORM series which can be found at <a href="https://www.aof.mod.uk">https://www.aof.mod.uk</a> ;
<b>DEF STAN</b>	means Defence Standards which can be accessed at <a href="https://www.dstan.mod.uk">https://www.dstan.mod.uk</a> ;
<b>Deliver</b>	means hand over the Contractor Deliverables to the Consignee. This shall include unloading, and any other specific arrangements, agreed in accordance with condition 28 and Delivered and Delivery shall be construed accordingly;
<b>Delivery Date</b>	means the date as specified in Schedule 2 (Schedule of Requirements) on which the Contractor Deliverables or the relevant portion of them are to be Delivered or made available for Collection;
<b>Denomination of Quantity (D of Q)</b>	means the quantity or measure by which an item of material is managed;
<b>Design Right(s)</b>	has the meaning ascribed to it by Section 213 of the Copyright, Designs and Patents Act 1988;
<b>Diversion Order</b>	means the Authority's written instruction (typically given by MOD Form 199) for urgent Delivery of specified quantities of Contractor Deliverables to a Consignee other than the Consignee stated in Schedule 3 (Contract Data Sheet);
<b>Effective Date of Contract</b>	means the date specified on the Authority's acceptance letter;

<b>Evidence</b>	means either: a. an invoice or delivery note from the timber supplier or Subcontractor to the Contractor specifying that the product supplied to the Authority is FSC or PEFC certified; or b. other robust Evidence of sustainability or FLEGT licensed origin, as advised by CPET;
<b>Firm Price</b>	means a price (excluding VAT) which is not subject to variation;
<b>FLEGT</b>	means the Forest Law Enforcement, Governance and Trade initiative by the European Union to use the power of timber-consuming countries to reduce the extent of illegal logging;
<b>Framework Agreement</b>	a. "Framework Agreement" means an agreement or other arrangement between the Authority or the Authority and one or more other contracting authorities, and one or more contractors that establishes the terms (in particular the terms as to price and, where appropriate, quantity) under which the contractor(s) will enter into one or more contracts with the Authority in the period during which the Framework Agreement applies.  b. "Authorised Demander" means the person(s) authorised by the Authority to place orders or tasks being the person(s) listed in the Framework Agreement.
<b>Government Furnished Assets (GFA)</b>	is a generic term for any MOD asset such as equipment, information or resources issued or made available to the Contractor in connection with the Contract by or on behalf of the Authority;
<b>Hazardous Contractor Deliverable</b>	means a Contractor Deliverable or a component of a Contractor Deliverable that is itself a hazardous material or substance or that may in the course of its use, maintenance, disposal, or in the event of an accident, release one or more hazardous materials or substances and each material or substance that may be so released;
<b>Independent Verification</b>	means that an evaluation is undertaken and reported by an individual or body whose organisation, systems and procedures conform to "ISO Guide 65:1996 (EN 45011:1998) General requirements for bodies operating product certification systems or equivalent", and who is accredited to audit against forest management standards by a body whose organisation, systems and procedures conform to "ISO 17011: 2004 General Requirements for Providing Assessment and Accreditation of Conformity Assessment Bodies or equivalent";
<b>Information</b>	means any Information in any written or other tangible form disclosed to one Party by or on behalf of the other Party under or in connection with the Contract;
<b>Issued Property</b>	means any item of Government Furnished Assets (GFA), including any materiel issued or otherwise furnished to the Contractor in connection with the Contract by or on behalf of the Authority;
<b>Legal and Sustainable</b>	means production and process methods, also referred to as timber production standards, as defined by the document titled "UK Government Timber Production Policy: Definition of legal and sustainable for timber procurement". The edition current on the day the Contract documents are issued by the Authority shall apply;
<b>Legislation</b>	means in relation to the United Kingdom any Act of Parliament, any subordinate legislation within the meaning of section 21 of the Interpretation Act 1978, or any exercise of Royal Prerogative;
<b>Military Level Packaging (MLP)</b>	means Packaging that provides enhanced protection in accordance with Def Stan 81-041 (Part 1), beyond that which Commercial Packaging normally provides for the military supply chain;
<b>Military Packager Approval Scheme (MPAS)</b>	is a MOD sponsored scheme to certify military Packaging designers and register organisations, as capable of producing acceptable Services Packaging Instruction Sheet (SPIS) designs in accordance with Defence Standard (Def Stan) 81-041 (Part 4);
<b>Military Packaging Level (MPL)</b>	shall have the meaning described in Def Stan 81-041 (Part 1);
<b>MPAS Registered Organisation</b>	is a packaging organisation having one or more MPAS Certificated Designers capable of Military Level designs. A company capable of both Military Level and commercial Packaging designs

	including MOD labelling requirements;
<b>MPAS Certificated Designer</b>	shall mean an experienced Packaging designer trained and certified to MPAS requirements;
<b>NATO</b>	means the North Atlantic Treaty Organisation which is an inter-governmental military alliance based on the North Atlantic Treaty which was signed on 4 April 1949;
<b>Notices</b>	shall mean all Notices, orders, or other forms of communication required to be given in writing under or in connection with the Contract;
<b>Overseas</b>	shall mean non UK or foreign;
<b>Packaging</b>	Verb. The operations involved in the preparation of materiel for; transportation, handling, storage and Delivery to the user; Noun. The materials and components used for the preparation of the Contractor Deliverables for transportation and storage in accordance with the Contract;
<b>Packaging Design Authority (PDA)</b>	shall mean the organisation that is responsible for the original design of the Packaging except where transferred by agreement. The PDA shall be identified in the Contract, see Annex A to Schedule 3 (Appendix – Addresses and Other Information), Box 3;
<b>Parties</b>	means the Contractor and the Authority, and Party shall be construed accordingly;
<b>Primary Packaging Quantity (PPQ)</b>	means the quantity of an item of material to be contained in an individual package, which has been selected as being the most suitable for issue(s) to the ultimate user, as described in Def Stan 81-041 (Part 1);
<b>Recycled Timber</b>	means recovered wood that prior to being supplied to the Authority had an end use as a standalone object or as part of a structure. Recycled Timber covers: <ul style="list-style-type: none"> <li>a. pre-consumer reclaimed wood and wood fibre and industrial by-products;</li> <li>b. post-consumer reclaimed wood and wood fibre, and driftwood;</li> <li>c. reclaimed timber abandoned or confiscated at least ten years previously;</li> </ul> it excludes sawmill co-products;
<b>Safety Data Sheet</b>	has the meaning as defined in the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) Regulations 2007 (as amended);
<b>Schedule of Requirements</b>	means Schedule 2 (Schedule of Requirements), which identifies, either directly or by reference, Contractor Deliverables to be provided, the quantities and dates involved and the price or pricing terms in relation to each Contractor Deliverable;
<b>Short-Rotation Coppice</b>	means a specific management regime whereby the poles of trees are cut every one to two years and which is aimed at producing biomass for energy. It is exempt from the UK Government timber procurement policy. For avoidance of doubt, Short-Rotation Coppice is not conventional coppice, which is subject to the timber policy;
<b>Specification</b>	means the description of the Contractor Deliverables, including any specifications, drawings, samples and / or patterns, and shall include any document or item which, individually or collectively is referred to in Schedule 2 (Schedule of Requirements). The Specification forms part of the Contract and all Contractor Deliverables to be supplied by the Contractor under the Contract shall conform in all respects with the Specification;
<b>STANAG 4329</b>	means the publication NATO Standard Bar Code Symbolologies which can be sourced at <a href="https://www.dstan.mod.uk/faqs.html">https://www.dstan.mod.uk/faqs.html</a> ;
<b>Subcontractor</b>	means any subcontractor engaged by the Contractor or by any other subcontractor of the Contractor at any level of subcontracting to provide Contractor Deliverables wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract and 'Subcontract' shall be interpreted accordingly;
<b>Timber and Wood-Derived Products</b>	means timber (including Recycled Timber and Virgin Timber but excluding Short-Rotation Coppice) and any products that contain wood or wood fibre derived from those timbers. Such products range from solid wood to those where the manufacturing processes obscure the wood element;

**Transparency Information** means the content of this Contract in its entirety, including from time to time agreed changes to the Contract, and details of any payments made by the Authority to the Contractor under the Contract;

**Virgin Timber** means Timber and Wood-Derived Products that do not include Recycled Timber



This document has been redacted in full.

**Contract DATA Sheet**

**General Conditions**

**Condition 2 – Duration of Contract:**

The Contract expiry date shall be: 5 Years from Contract issue.

**Condition 4 – Governing Law:**

Contract to be governed and construed in accordance with:

English Law ☒

Scots Law ☐ clause 4.d shall apply *(one must be chosen)*

Solicitors or other persons based in England and Wales (or Scotland if Scots Law applies) irrevocably appointed for Contractors without a place of business in England (or Scotland, if Scots Law applies) in accordance with clause 4.g (if applicable) are as follows:

**Condition 7 – Authority's Representatives:**

The Authority's Representatives for the Contract are as follows:

Commercial: [REDACTED] (as per Annex A to Schedule 3 (DEFFORM 111))

Project Manager: [REDACTED] (as per Annex A to Schedule 3 (DEFFORM 111))

**Condition 18 – Notices:**

Notices served under the Contract shall be sent to the following address:

Authority: DCC, STSP, NH3, Cedar 2a #3260, ABW, Bristol, BS34 8JH (as per DEFFORM 111)

Contractor: To be updated at contract award

Notices can be sent by electronic mail? ☒ *(tick as appropriate)*

**Condition 19.a – Progress Meetings:**

The Contractor shall be required to attend the following meetings:

As per Schedule 9 - Project Statement of Work

**Condition 19.b – Progress Reports:**

The Contractor is required to submit the following Reports:

As per Schedule 9 - Project Statement of Work

Reports shall be Delivered to the following address:

See Box 2 of DEFFORM 111

Official

## Supply of Contractor Deliverables

### Condition 20 – Quality Assurance:

Is a Deliverable Quality Plan required for this Contract? No

Other Quality Assurance Requirements:

#### AQAP 2131

NATO Quality Assurance Requirements for Final Inspection. Edition C Version 1

#### DEFCON 602 B

Quality Assurance (Without Deliverable Quality Plan)

#### DEFSTAN 05-061 Pt 1

Quality Assurance Procedural Requirements - Concessions Issue 6

#### DEFSTAN 05-061 Pt 4

Quality Assurance Procedural Requirements - Contractor Working Parties Issue 3

#### AQAP 2070

Government Quality Assurance against this contract. Edition B Version 4

### Certificate of Conformity

A Certificate of Conformity template for use under this contract is attached at Schedule 16 - Certificate of Conformity

### Condition 21 – Marking of Contractor Deliverables:

Special Marking requirements: In accordance with Schedule 10 – NATO Codification

### Condition 23 - Supply of Data for Hazardous Contractor Deliverables, Materials and Substances:

A completed Schedule 6 (Hazardous Contractor Deliverables, Materials or Substance Statement), and if applicable, Safety Data Sheet(s) are to be provided by e-mail with attachments in Adobe PDF or MS WORD format to:

- a) The Authority's Representative (Commercial)
- b) Defence Safety Authority – [DSA-DLSR-MovTpt-DGHSIS@mod.uk](mailto:DSA-DLSR-MovTpt-DGHSIS@mod.uk)

to be Delivered no later than one (1) month prior to the Delivery Date for the Contract Deliverable or by the following date: Tender Return

**Condition 24 – Timber and Wood-Derived Products:**

A completed Schedule 7 (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements) is to be provided by e-mail with attachments in Adobe PDF or MS WORD format to the Authority's Representative (Commercial)

to be Delivered by the following date: Tender Return

**Condition 25 – Certificate of Conformity:**

Is a Certificate of Conformity required for this Contract? ☒ (tick as appropriate)

Applicable to Line Items: 1, 2, 3, 4, 5, 6, 7, 56 and 58

If required, does the Contractor Deliverables require traceability throughout the supply chain? ☒  
(tick as appropriate)

Applicable to Line Items: 1, 2, 3, 4, 5, 6, 7, 56 and 58

**Condition 27.b – Delivery by the Contractor:**

The following Line Items are to be Delivered by the Contractor:

All line Items as stated in Schedule 2- Schedule of Requirements

Special Delivery Instructions: Not Applicable

Each consignment is to be accompanied by a DEFFORM 129J.

**Condition 27.c - Collection by the Authority:**

The following Line Items are to be Collected by the Authority:

Not Applicable

Special Delivery Instructions:

Not Applicable

Each consignment is to be accompanied by a DEFFORM 129J.

Consignor details (in accordance with 27.c.(4)):

Not Applicable

Consignee details (in accordance with condition 22):

Not Applicable

**Condition 29 – Rejection:**

The default time limit for rejection of the Contractor Deliverables is thirty (30) days unless otherwise specified here:

The time limit for rejection shall be 30 (Thirty) Business Days.

**Condition 31 – Self-to-Self Delivery:**

Self-to-Self Delivery required? ☐ (tick as appropriate)

If required, Delivery address applicable: Not Applicable

**Pricing and Payment**

**Condition 34 – Contract Price:**

All Prices detailed in all Schedules shall be FIRM for the duration of the contract.

**Termination**

**Condition 41 – Termination for Convenience:**

The Notice period for terminating the Contract shall be twenty (20) days unless otherwise specified here:

The Notice period for termination shall be 20 (Twenty) Business Days

**Other Addresses and Other Information** (forms and publications addresses and official use information)

See Annex A to Schedule 3 (DEFFORM 111)

**Schedule 3**  
**Annex A**

DEFFORM 111

(Edn 07/21)

Appendix - Addresses and Other Information

**1. Commercial Officer**

Name: [REDACTED]

Address: STSP, DCC,  
MOD Abbey Wood,  
#3260 Cedar 2a,  
Bristol, BS34 8JH

Email: [REDACTED]

**2. Project Manager, Equipment Support Manager or PT Leader**

(from whom technical information is available)

Name: [REDACTED]

Address STSP, DCC,  
MOD Abbey Wood,  
#3260 Cedar 2a,  
Bristol, BS34 8JH

Email: [REDACTED]

**3. Packaging Design Authority**

Organisation & point of contact:  
As per Box 2

(Where no address is shown please contact the Project Team in Box 2)

**4. (a) Supply / Support Management Branch or Order Manager:**

Branch/Name: As per Box 2

Tel No:

(b) U.I.N.

**5. Drawings/Specifications are available from**

**6. INTENTIONALLY BLANK**

**7. Quality Assurance Representative:**

Commercial staff are reminded that all Quality Assurance requirements should be listed under the General Contract Conditions.

**AQAPS** and **DEF STANs** are available from UK Defence Standardization, for access to the documents and details of the helpdesk visit <http://dstan.gateway.isg-r.r.mil.uk/index.html> [intranet] or <https://www.dstan.mod.uk/> [extranet, registration needed].

**8. Public Accounting Authority**

1. Returns under DEFCON 694 (or SC equivalent) should be sent to DBS Finance ADMT – Assets In Industry 1, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD  
☎ 44 (0) 161 233 5397

2. For all other enquiries contact DES Fin FA-AMET Policy, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD  
☎ 44 (0) 161 233 5394

**9. Consignment Instructions**

The items are to be consigned as follows:  
As per Schedule 2 – Schedule of Requirements

**10. Transport.** The appropriate Ministry of Defence Transport Offices are:

**A. DSCOM**, DE&S, DSCOM, MoD Abbey Wood, Cedar 3c, Mail Point 3351, BRISTOL BS34 8JH

Air Freight Centre

IMPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943

EXPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943

Surface Freight Centre

IMPORTS ☎ 030 679 81129 / 81133 / 81138 Fax 0117 913 8946

EXPORTS ☎ 030 679 81129 / 81133 / 81138 Fax 0117 913 8946

**B. JSCS**

JSCS Helpdesk No. 01869 256052 (select option 2, then option 3)

JSCS Fax No. 01869 256837

Users requiring an account to use the MOD Freight Collection Service should contact [UKStratCom-DefSp-RAMP@mod.gov.uk](mailto:UKStratCom-DefSp-RAMP@mod.gov.uk) in the first instance.

**11. The Invoice Paying Authority**

Ministry of Defence ☎ 0151-242-2000

DBS Finance

Walker House, Exchange Flags Fax: 0151-242-2809

Liverpool, L2 3YL

**Website is:**

<https://www.gov.uk/government/organisations/ministry-of-defence/about/procurement#invoice-processing>

**12. Forms and Documentation are available through \*:**

Ministry of Defence, Forms and Pubs Commodity Management  
PO Box 2, Building C16, C Site  
Lower Arncott

Bicester, OX25 1LP (Tel. 01869 256197 Fax: 01869 256824)

**Applications via fax or email:** [DESLCSLS-](mailto:DESLCSLS-)

[OpsFormsandPubs@mod.uk](mailto:OpsFormsandPubs@mod.uk)

**\*NOTE**

1. Many **DEFCONs** and **DEFFORMs** can be obtained from the MOD Internet Site:

<https://www.aof.mod.uk/aofcontent/tactical/toolkit/index.htm>

2. If the required forms or documentation are not available on the MOD Internet site requests should be submitted through the Commercial Officer named in Section 1.

**SCHEDULE 4**  
**CONTRACT CHANGE CONTROL PROCEDURE (i.a.w. clause 6.d)**

**1. Authority Changes**

Subject always to Condition 6 (Formal Amendments to the Contract), the Authority shall be entitled, acting reasonably, to require changes to the Contractor Deliverables (a "Change") in accordance with this Schedule 4.

**2. Notice of Change**

- a. If the Authority requires a Change, it shall serve a Notice (an "Authority Notice of Change") on the Contractor.
- b. The Authority Notice of Change shall set out the change required to the Contractor Deliverables in sufficient detail to enable the Contractor to provide a written proposal (a "Contractor Change Proposal") in accordance with clause 3 below.

**3. Contractor Change Proposal**

- a. As soon as practicable, and in any event within fifteen (15) Business Days (or such other period as the Parties may agree) after having received the Authority Notice of Change, the Contractor shall deliver to the Authority a Contractor Change Proposal.
- b. The Contractor Change Proposal shall include:
  1. the effect of the Change on the Contractor's obligations under the Contract;
  2. a detailed breakdown of any costs which result from the Change;
  3. the programme for implementing the Change;
  4. any amendment required to this Contract as a result of the Change, including, where appropriate, to the Contract Price; and
  5. such other information as the Authority may reasonably require.
- c. The price for any Change shall be based on the prices (including all rates) already agreed for the Contract and shall include, without double recovery, only such charges that are fairly and properly attributable to the Change.

#### **4. Contractor Change Proposal – Process and Implementation**

- a. As soon as practicable after the Authority receives a Contractor Change Proposal, the Authority shall:
  1. evaluate the Contractor Change Proposal;
  2. where necessary, discuss with the Contractor any issues arising and following such discussions the Authority may modify the Authority Notice of Change and the Contractor shall as soon as practicable, and in any event not more than ten (10) Business Days (or such other period as the Parties may agree) after receipt of such modification, submit an amended Contractor Change Proposal.
- b. As soon as practicable after the Authority has evaluated the Contractor Change Proposal (amended as necessary) the Authority shall:
  1. indicate its acceptance of the Change Proposal by issuing an amendment to the Contract in accordance with Condition 6 (Formal Amendments to the Contract); or
  2. serve a Notice on the Contractor rejecting the Contractor Change Proposal and withdrawing (where issued) the Authority Notice of Change.
- c. If the Authority rejects the Change Proposal, it shall not be obliged to give its reasons for such rejection.
- d. The Authority shall not be liable to the Contractor for any additional work undertaken or expense incurred unless a Contractor Change Proposal has been accepted in accordance with Clause 4b.(1) above.

#### **5. Contractor Changes**

If the Contractor wishes to propose a Change, it shall serve a Contractor Change Proposal on the Authority, which shall include all the information required by Clause 3b above, and the process at Clause 4 above shall apply.



**SCHEDULE 5**

**Contractor's Commercial Sensitive Information Form (i.a.w. Condition 12)**

Contract No: 700879368
Description of Contractor's Commercially Sensitive Information:
Cross Reference(s) to location of sensitive information:
Explanation of Sensitivity:
Details of potential harm resulting from disclosure:
Period of Confidence (if applicable):
Contact Details for Transparency / Freedom of Information matters: Name: Position: Address: Telephone Number: Email Address:

**SCHEDULE 6**

**Hazardous Contractor Deliverables, Materials or Substances  
Statement by the Contractor**

Contract No: **700879368**

Contract Title: **Project Vanisher**

Contractor:

Date of Contract:

\* To the best of our knowledge there are no hazardous Contractor Deliverables, materials or substances to be supplied. ☐

\* To the best of our knowledge the hazards associated with materials or substances to be supplied under the Contract are identified in the Safety Data Sheets (Qty: ) attached in accordance with condition 23.  
☐

Contractor's Signature:

Name:

Job Title:

Date:

\* check box (☒) as appropriate

---

To be completed by the Authority

Domestic Management Code (DMC):

NATO Stock Number:

Contact Name:

Contact Address:

Copy to be forwarded to:

Hazardous Stores Information System (HSIS)  
Defence Safety Authority (DSA)  
Movement Transport Safety Regulator (MTSR)  
Hazel Building Level 1, #H019  
MOD Abbey Wood (North)  
Bristol BS34 8QW

**SCHEDULE 7**

**Timber and Wood Derived Products Supplied under the Contract**

The following information is provided in respect of condition 24 (Timber and Wood-Derived Products):

<b>Schedule of Requirements item and timber product type</b>	<b>Volume of timber Delivered to the Authority with FSC, PEFC or equivalent evidence</b>	<b>Volume of timber Delivered to the Authority with other evidence</b>	<b>Volume (as Delivered to the Authority) of timber without evidence of compliance with Government Timber Procurement Policy</b>	<b>Total volume of timber Delivered to the Authority under the Contract</b>

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**Official**

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NOT USED

**SCHEDULE 12 – Post Design Support (PDS) / Tasking Services**

1. The Contractor shall carry out all PDS / Tasking Services activity in accordance with the pricing information detailed in this schedule.
2. The Authority may raise a PDS / Task activity on the Contractor at any time during the period of the Contract, to modify the delivered system and / or associated information from the original design specification.

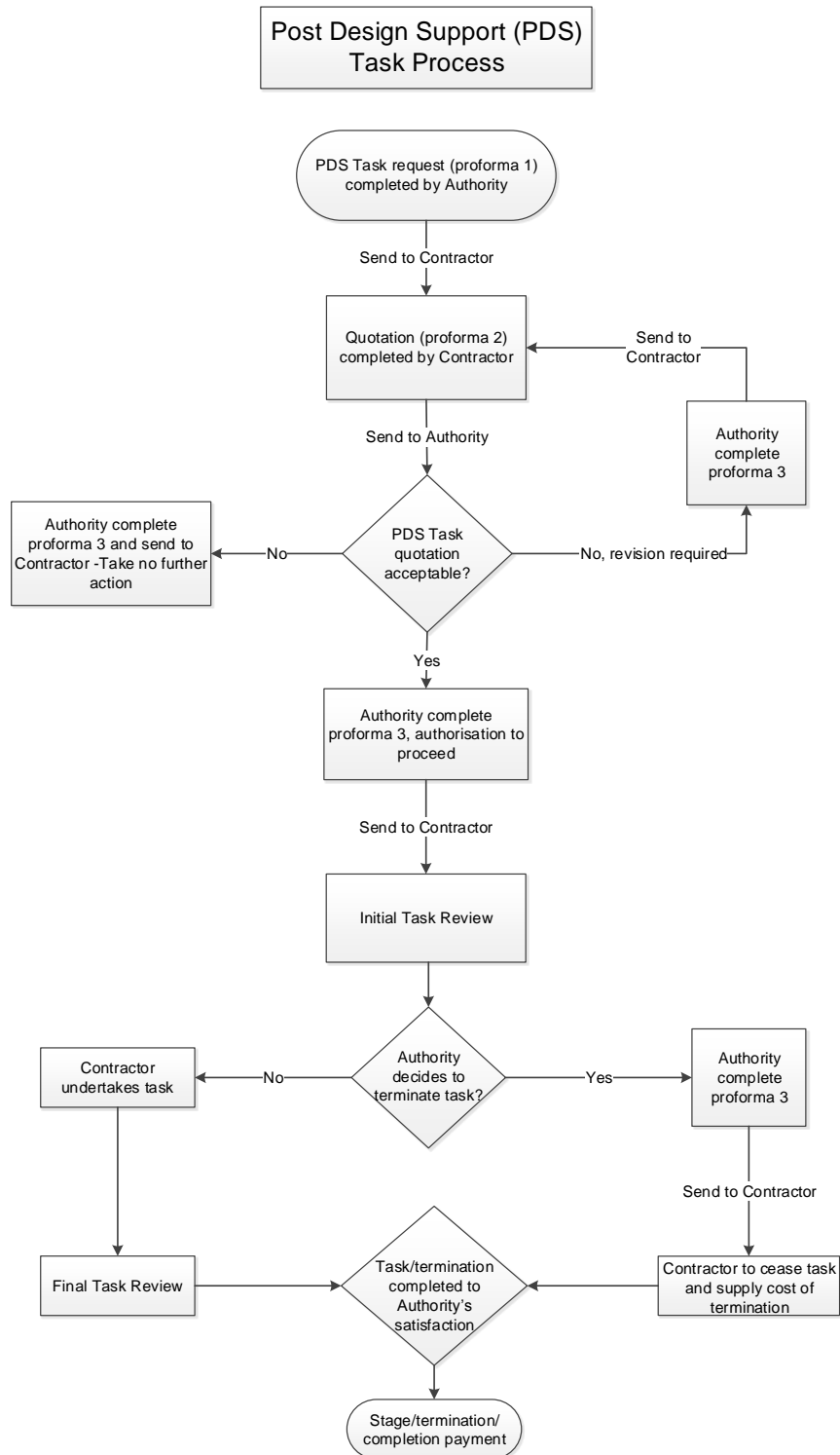
Areas of possible PDS / Task activity may include (but not limited to):

- (i) Software Modification
  - (ii) Hardware Modification
  - (iii) Amendments / Additions to Complete Equipment Schedule (including top level configuration documentation)
  - (iv) Technical Documentation Amendments
  - (v) Review / Update of Safety Documentation
3. All PDS / Task requests will be managed in accordance with the process flow chart shown at figure 1 below and managed through the PDS Tasking Form at Annex A of this document.
  4. The Contractors response shall include a breakdown of costs to include labour and material costs for every aspect of the tasking, where subcontractors are utilised, these shall be broken down accordingly.
  5. Labour rates shall be taken from the cost table shown at table 1.

**FIRM LABOUR COST**

Year	Employee Grade	Firm Labour Cost £ (Ex VAT) / Hr
1 <sup>st</sup> April 2022 – 31 <sup>st</sup> March 2023	Tenderer to Complete	Tenderer to Complete
	Tenderer to Complete	Tenderer to Complete
	Tenderer to Complete	Tenderer to Complete
1 <sup>st</sup> April 2023 – 31 <sup>st</sup> March 2024	Tenderer to Complete	Tenderer to Complete
	Tenderer to Complete	Tenderer to Complete
	Tenderer to Complete	Tenderer to Complete
1 <sup>st</sup> April 2024 – 31 <sup>st</sup> March 2025	Tenderer to Complete	Tenderer to Complete
	Tenderer to Complete	Tenderer to Complete
	Tenderer to Complete	Tenderer to Complete
1 <sup>st</sup> April 2025 – 31 <sup>st</sup> March 2026	Tenderer to Complete	Tenderer to Complete
	Tenderer to Complete	Tenderer to Complete
	Tenderer to Complete	Tenderer to Complete
1 <sup>st</sup> April 2026 – 31 <sup>st</sup> March 2027	Tenderer to Complete	Tenderer to Complete
	Tenderer to Complete	Tenderer to Complete
	Tenderer to Complete	Tenderer to Complete

Table 1. PDS Labour Costs



*Figure.1 – PDS Flow Chart*

**POST DESIGN SUPPORT FORM**

**Part A: PDS REQUEST** - to be completed by the Authority.

Contract Number

700879368

PDS Task Number

<b>PDS Task Title</b>	
<b>Description of Task</b> <i>(Brief summary of requirement e.g. task, milestones, reporting, deliverables and acceptance criteria)</i>	
<b>Continuation Sheet Ref:</b>	
<b>Response Required By:</b>	

Authority Authorisation

Name	Signature	Date

=====

**Part. B: PDS RESPONSE** - to be completed by the Contractor.

Contract Number

700879368

PDS Task Number

The service detailed in Part 1 can be provided in accordance with the following detail:

--

Continuation sheet attached (if appropriate) ☐

Anticipated start date:

--

Anticipated completion date:

--

	Total £k	FY	FY	FY	Subsequent years
Total of task					
Total Price (inc any changes):					£k

Price valid until date:

--

**Supplier Authorisation:**

Name			
Position			
Signature			
Date		Telephone Number	

**Part C: PDS AUTHORISATION TO PROCEED** - to be Completed by the Authority and returned to the Contractor

**Authorisation to proceed ( )**

Contract Number

700879368

PDS Task Number

Authorisation is given to proceed with the work detailed in Parts 1 and 2 of this form in accordance with the MOD Project Tasking Note.

Agreed start date:

Agreed completion date:

**Limit of Liability: £k**

**Customer Authorisation:**

Name			
Position			
Signature			
Date		Telephone Number	

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Spares Pack

Item Number	Bill of Materials / Manufacturer Part Number	Manufacturer Product Code	MOD NATO Stock Number	Description	Denomination of Quantity	Currency	Quantity	Firm Price Each (Ex VAT)	Total Firm Price Each (Ex VAT)
1	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer	PPQ: 1 DofQ: EACH	GBP	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer
2	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer	PPQ: 1 DofQ: EACH	GBP	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer
3	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer	PPQ: 1 DofQ: EACH	GBP	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer
4	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer	PPQ: 1 DofQ: EACH	GBP	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer
5	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer	PPQ: 1 DofQ: EACH	GBP	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer
6	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer	PPQ: 1 DofQ: EACH	GBP	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer
7	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer	PPQ: 1 DofQ: EACH	GBP	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer
8	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer	PPQ: 1 DofQ: EACH	GBP	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer
9	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer	PPQ: 1 DofQ: EACH	GBP	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer
10	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer	PPQ: 1 DofQ: EACH	GBP	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer
11	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer	PPQ: 1 DofQ: EACH	GBP	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer
12	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer	PPQ: 1 DofQ: EACH	GBP	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer
13	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer	PPQ: 1 DofQ: EACH	GBP	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer
14	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer	PPQ: 1 DofQ: EACH	GBP	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer

Spares Pack

Item Number	Bill of Materials / Manufacturer Part Number	Manufacturer Product Code	MOD NATO Stock Number	Description	Denomination of Quantity	Currency	Quantity	Firm Price Each (Ex VAT)	Total Firm Price Each (Ex VAT)
15	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer	PPQ: 1 DofQ: EACH	GBP	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer
16	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer	PPQ: 1 DofQ: EACH	GBP	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer
17	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer	PPQ: 1 DofQ: EACH	GBP	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer
18	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer	PPQ: 1 DofQ: EACH	GBP	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer
19	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer	PPQ: 1 DofQ: EACH	GBP	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer
20	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer	PPQ: 1 DofQ: EACH	GBP	To be completed by the tenderer	To be completed by the tenderer	To be completed by the tenderer
								Total Price	To be completed by the tenderer

Note: Tenderer to Insert additional rows or Delete unused rows

## PROJECT: Procurement of Breaching Shotgun – Project Vanisher

### Cyber Security

The Cyber Risk Level for Vanisher Project has been assessed as a **Very Low** risk project. The associated Risk Assessment Reference (RAR or RA) is:

**RAR-846296374**

DE&S have included DEFCON 658 (SC2) <sup>1</sup> as part of the ITT process. This DEFCON is intended to protect MOD Identifiable Information transferred during the life of the contract and sometimes post contract. MOD Identifiable Information is defined in DEFCON 658 (SC2) as “All Electronic Information which is attributed to or could identify an existing or proposed MOD capability, defence activities or personnel and which the MOD requires to be protected against loss, misuse, corruption, alteration and unauthorised disclosure.”

Tenderers must complete the [Supplier Assurance Questionnaire \(SAQ\)](#) and send this to [ISSDes-DCPP@mod.gov.uk](mailto:ISSDes-DCPP@mod.gov.uk) to demonstrate their compliance with the cyber security controls relating to the system that would process the bid or MOD material. Def Stan 05-138 (appendix 1) provides further advice and specific guidance on classifications. If the SAQ response is not accepted as sufficient by the [ISSDes-DCPP@mod.gov.uk](mailto:ISSDes-DCPP@mod.gov.uk), then tenderers should show how they intend to achieve compliance by completing a Cyber Implementation Plan.

Suppliers intending to sub-contract part of a Ministry of Defence contract will also be required to complete a Risk Assessment for the sub-contract(s), and sub-contractors will be required to complete an SAQ in response to it.

You can find further information on Cyber Security by clicking [here](#) or by searching for DCPD on GOV.UK.

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<sup>1</sup> Copy of DEFCON 658 (SC2) is attached at Schedule 21 to the terms and conditions of this contract.

<b>Certificate of Conformity</b>			1. Contractor's Unique CoC Serial No.	
2. Contractor's Name and Address:			3. Contract Number:	
			4. Contract Amendment Number:	
			5. Details of Approved Concessions:	
6. Acquirer Name and Address:			7. Deliver Address:	
8. Contract Item Number	9. Product Description and/or Part Number	10. Quantity	11. Shipment Document Numbers	12. Undelivered Quantity
<b>13. Traceability Information reference DEFCON 627</b> (check the N/A box to indicate no traceability requirements) a) Sub-contract/order number: b) Specification/drawing number including issue: N/A c) Identification marks and/or serial number(s): <input type="checkbox"/> d) Material cast number: e) Batch and/or lot number: f) Test and/or inspection report(s): g) Incoming release note number/reference:				
• Other Remarks or Comments: (e.g. Cure Date. Shelf Life)				
• Contractor's Statement of Quality: It is certified that apart from the concessions noted in block #5 above, the products listed above conform in all respects to the contract requirements				
Date:		Name and Post Title:		Signature:

## THIS DEED OF GUARANTEE AND INDEMNITY GIVEN BY A PARENT COMPANY IN RESPECT OF A SUBSIDIARY

is made the [ ] day of [ ] 20[ ]

### BETWEEN:

(1) [Insert the name of the name of the Guarantor] [[a company incorporated in England and Wales with number [ ] whose registered office is at [ ]] **or** [a company incorporated under the laws of [insert country] registered in [insert country] with number [ ] at [insert place of registration] whose principal office is at [ ]] (“the **Guarantor**”); in favour of

(2) THE SECRETARY OF STATE FOR DEFENCE (“the **Authority**”)

### WHEREAS:

(A) The Authority proposes to award contract number [insert number] (“the **Contract**”) to [insert contractor’s full corporate name] [insert company registration number] whose registered office is at [insert details] (“the **Contractor**”).

(B) It is a condition precedent of the Authority entering into the Contract with the Contractor that the Guarantor must first execute and deliver this Deed of Guarantee and Indemnity to the Authority.

Now in consideration of the Authority entering into the Contract, the Guarantor hereby irrevocably and unconditionally agrees with the Authority as follows:

1. The Guarantor shall provide all resources and facilities whether financial or otherwise to enable the Contractor duly to fulfil its obligations in and arising from the Contract subsisting between the Authority and the Contractor at the date of this deed or which shall be entered into at any time after the date of this deed between the Authority and the Contractor (the ‘**Indemnified Obligations**’);

2. If:

a) the Contractor shall fail in any respect duly to perform and observe, or shall otherwise be in breach of, any of the Indemnified Obligations; or

b) any of the Indemnified Obligations are or become void, voidable, unenforceable or otherwise ineffective; or

c) the Contract is terminated owing to a breach or an event of default on the part of the Contractor; or

d) a receiver, administrative receiver, administrator, liquidator or similar officer is appointed over any or all of the Contractor's undertaking or assets;

then, forthwith on demand from the Authority the Guarantor shall, as a primary obligation, indemnify the Authority against all losses, claims, liabilities, damages, expenses and costs which may be incurred, met or suffered by the Authority and which arise from or in connection with (whether directly or indirectly) any such matters save that, subject to the other provisions of this deed, the liability of the Guarantor under this clause shall not exceed the liability of the Contractor to the Authority under the Contract.

3. The Guarantor irrevocably and unconditionally undertakes that all sums received or recovered by the Authority:
- a) by way of dividend, composition or payment arising from the liquidation, bankruptcy or otherwise of the Contractor may be taken and applied by the Authority in part satisfaction of the losses, claims, liabilities, damages, expenses and costs referred to in paragraph 2 above, and the Guarantor's obligations under this deed shall stand good in respect of the balance;
  - b) under this deed, may be credited to a suspense account and held in such account for so long as the Authority thinks fit pending the application of such monies towards the payment of the Indemnified Obligations;
  - c) from the Contractor in respect of any of the Indemnified Obligations, may be applied by the Authority in any manner and in any order towards any debts owed by the Contractor to the Authority (whether or not relating to the Indemnified Obligations) as the Authority may determine (notwithstanding any appropriation or purported appropriation by any person);
4. The Guarantor shall have no right to be subrogated to the Authority and shall not make any claim against the Contractor (unless instructed so to do by the Authority, in which event the Guarantor shall make such a claim) in respect of the Guarantor's performance under this deed, until the Authority has received payment in full of its claim against the Contractor;
5. This deed shall not be affected by any insolvency (including, without limitation, winding up, administration, receivership or administrative receivership), amalgamation, reconstruction, change of name, ownership, control or status or any legal limitation relating to, by or of the Contractor or any other person or, where the Contractor is a partnership, by any change in the partners;
6. The Guarantor shall not be discharged or released from its obligations under this deed:
- a) by any arrangement or agreement made between the Authority and the Contractor or a receiver, administrative receiver, administrator, liquidator or similar officer of the Contractor: or
  - b) by any renegotiation, substitution, alteration, amendment or variation (however fundamental) and whether or not to the Guarantor's disadvantage, to or of, the obligations imposed upon the Contractor or any other person; or
  - c) by any forbearance granted by the Authority to the Contractor or any other person as to payment, time, performance or otherwise; or
  - d) by any release or variation (however fundamental) of, any invalidity in, or any failure to take, perfect or enforce any other indemnity, guarantee or security in respect of the obligations to which this deed relates; or
  - e) by any other matter or thing which but for this provision might exonerate the Guarantor and this notwithstanding that such arrangement, agreement, renegotiation, substitution, alteration, amendment, variation, forbearance, matter or thing may have been made, granted or happened without the Guarantor's knowledge or assent;
7. No failure to exercise or any delay in exercising on the Authority's part any right or remedy under this deed or under the Contract or any other agreement shall operate as a waiver of such right or remedy;

8. Any certificate or determination by the Authority of the amount due under this deed or under the Contract shall be, in the absence of manifest error, conclusive evidence of the matters to which it relates;

9. No settlement or discharge between the Authority and the Guarantor or the Contractor shall be effective if any payment to the Authority in respect of the Contractor's or the Guarantor's obligations to the Authority is avoided or reduced by virtue of any provisions or enactments relating to bankruptcy, insolvency, liquidation or similar laws of general application from time to time and if such payment is so avoided or reduced, the Authority shall be entitled to recover from the Guarantor the amount of such payment as if such settlement or discharge had not occurred;

10. The Authority shall not be obliged, before exercising any of its rights under this deed, to take any action against, or make any demand from, the Contractor or any other person;

11. The Guarantor's obligations under this deed are continuing obligations and shall not be considered satisfied, settled or terminated by the Authority giving any approvals, or taking delivery of any goods, or accepting any performance under the contract and no single, cumulative or partial exercise by the Authority of any right or remedy under or arising from this deed shall prevent any further exercise;

12. All payments under this deed shall be made without set-off, counter-claim or other deduction;

13. The Guarantor shall be bound by all court judgments or arbitration awards relating to the contract or any dispute or matter between the Authority and the Contractor;

14. This deed shall be governed by and construed in accordance with English law. The parties irrevocably submit to English jurisdiction to the exclusion of all foreign jurisdiction, save that foreign jurisdictions may apply solely for the purposes of giving effect to this paragraph and for the enforcement of any judgment, order or award given under English jurisdiction.

**[The following clause should only be used where the Guarantor is a company incorporated outside of England and Wales]**

15. The Guarantor irrevocably appoints Messrs [insert name and address of firm of Solicitors in England or Wales], Solicitors as its agents to accept on its behalf service of all process and other documents of whatever description to be served on the Guarantor in connection with this Deed or any related matter.

Delivered as a deed on the date of this document.

Executed as a deed by [insert corporate name].

in the presence of ..... Director

..... Director or Company Secretary

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Appendix 1 to DEFFORM 24 (Edn 10/14)

**Explanatory Notes**

1. These explanatory notes are to assist in the completion of the DEFFORM 24 and should not be included in your completed Deed of Guarantee and Indemnity.
2. DEFFORM 24 is a Deed of Guarantee and Indemnity given by a Parent Company in respect of a Subsidiary. It is designed to cover a specific single contract entered into with the MOD by the subsidiary. The purpose of obtaining a Parent Company guarantee and indemnity is to ensure that the company is in a position to be able to execute the contract properly and, failing that, the MOD is reimbursed for any extra expenditure it may incur in making arrangements to have the contract completed elsewhere.
3. Where the company is able to offer a guarantee and indemnity from a parent (holding) company, commercial officers should ensure that they seek the guarantee and indemnity from the ultimate parent (holding) company in the group, rather than an intermediate parent (holding) company, or any other intermediate parent (holding) company where such exists. In such cases the MOD will wish to be satisfied as to the parent (holding) company's ability to provide the cover required, having regard to its financial resources and prospects. You should always ask Cost Assurance and Analysis Service - Industry Analysis (CAAS IA) to advise on this. Where the proposed contract is large, this may entail the holding company agreeing to a separate assessment by CAAS IA. In order to assure consistency throughout the MOD only this DEFFORM can be used as a Deed of Guarantee and Indemnity being given by a Parent Company.

**Guidance On Completion**

4. The specimen wording of the DEFFORM should be suitable for most circumstances and should not be changed at the request of a Guarantor. You must seek Central Legal Services – Commercial Law (CLS-CL) advice if the Guarantor requests a revision to the template DEFFORM or if the proposed Guarantor is a company registered outside England and Wales. In the latter case, you will need to seek legal advice to confirm both that the proposed Guarantor has power (under its own corporate rules and the laws of its home country) to enter into the deed and that it has executed the deed in a manner that makes it legally binding on the Guarantor.

**Introductory Paragraph**

5. Insert the contractor's name and, if applicable, registration number of the contractor (unless the contractor is a UK partnership or an overseas company it will be shown on the company letterhead) and the contract / tender details and dates and edit as appropriate.

**Paragraph 1**

6. Covers the Guarantor's obligations to the MOD to provide all resources and facilities (financial or otherwise) to enable the contractor to meet its obligations under the contract.

**Paragraph 2**

7. Covers the circumstances under which the guarantee and indemnity may be activated. This also requires the Guarantor to indemnify the MOD on demand against all losses and costs which the MOD has incurred as a result of these circumstances. However, the MOD cannot claim more under this paragraph from the Guarantor than they could claim from the



**Appendix 1 to DEFFORM 24 (Edn 10/14)**

contractor under the contract. If the contract contains a Limitation of Contractor's Liability, this will automatically apply to the indemnity under paragraph 2 of DEFFORM 24.

**Paragraph 3**

8. Covers the way in which any sums received by the MOD from either the contractor and / or the Guarantor may be used.

**Paragraph 4**

9. Covers the essential requirement of subrogation (the substitution in law of one party for another as the creditor). This will normally ensure that the Guarantor fulfils its obligations to the MOD before it takes any action to recover any claims of its own from the contractor. However, it also provides for the Guarantor to claim its right of subrogation if instructed to do so by the MOD, if that avenue would mean that it is able to recover money from a contractor in liquidation, which would then enable the Guarantor to meet the MOD claim.

**Paragraph 5**

10. Maintains the validity of this guarantee and indemnity even if the contractor changes its name, status and even ownership or control etc.

**Paragraph 6**

11. Prevents the Guarantor from subsequently avoiding its responsibilities even if there have been any amendments to the underlying contract.

**Paragraph 7**

12. Safeguards the MOD in the event of the MOD's failure or delay to call on the guarantee and indemnity.

**Paragraph 8**

13. The MOD may self-certify the amount of any demand for payment under the guarantee and indemnity. The Guarantor may only challenge this in cases of "manifest error".

**Paragraph 9**

14. Covers the scenario where the MOD may have received payment in settlement of a dispute but that payment then becomes void (e.g. if the payee soon thereafter becomes insolvent). The Guarantor still remains liable for the amount of the voided payment.

**Paragraph 10**

15. Confirms that MOD may seek recompense from the Guarantor without first having to attempt to make recovery from the contractor.

**Paragraph 11**

16. Confirms that the MOD taking delivery of goods, accepting performance under the contract or making any claim under the deed, does not relieve the Guarantor from its ongoing liability under the deed. This is to prevent accidental waiver of the MOD's rights.

**Paragraph 12**

Appendix 1 to DEFFORM 24 (Edn 10/14)

17. This is self explanatory.

**Paragraph 13**

18. Prevents the Guarantor from claiming that it may not be bound by an arbitrator's decision against a contractor, which could force the MOD to litigate the same point a second time with the possibility that a different court may reach a different conclusion.

**Paragraph 14**

19. Confirms that English law applies to the indemnity, no matter which national law may apply to any contract. Also, if the contractor is not subject to English law, the MOD may use the contractor's national law in order to enforce any claim that may be agreed.

**Paragraph 15**

20. Delete this clause if the Guarantor is an English company (i.e. a company incorporated in England or Wales). If the Guarantor is a foreign company, then the paragraph should be retained. In either case you should delete the introductory words in bold.

**Execution**

Insert the full corporate name of the Guarantor in the execution clause, where indicated. For the deed to be effective it is essential that it is signed by two directors of the Guarantor or by one director and the company secretary. It is now not strictly necessary for the Guarantor to apply its corporate seal - although the MOD may request it.

EQUIPMENT BREAKDOWN STRUCTURE

{ Project Vanisher image – Contractor to Provide}

This schedule shall include both CES and Spares equipment items

Item No.	NSN	Manufacturers Part Number	Description	Image	D of Q	PPQ	Dimension	Weight

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## GUIDANCE FOR COMPLETION OF DEFFORM 528

**For the purposes of this form no prioritisation of importance is implied in the ordering of the following sections.**

For the purposes of this form **“Materiel”** means any Materiel (including hardware, information, software and/or services) which is regulated by any Export Control Regulations (e.g. International Traffic in Arms Regulations (ITAR), the Export Administration Regulations (EAR), etc.).

For the purposes of this form **“Data”** means the information required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance, or modification of controlled articles. This includes information in the form of blueprints, drawings, plans, instructions, diagrams, photographs, etc. It may take forms such as models, formulae, tables, engineering designs and specifications, manuals and instructions written or recorded on other media or devices such as disk, tape, or read-only memories.

For the purposes of this form **“Service”** means the intangible products such as training, technical support or provision of expertise.

For the purposes of this form **“Part Number”** means the part number of the Materiel that is being supplied under the Contract.

### PAGE 1

1a - 1f Provide full correspondence name and address of the supplying organisation.

### PAGE 2

#### SECTION 1

For the purposes of this section of the form, each line item of Materiel listed should be at the level that is or will be managed and transacted within the MOD inventory system.

1a to 1i Identify to the best of your knowledge and belief the part number and NATO or National Stock Number (NSN), Manufacturer Name & Address, CAGE/NCAGE Code (NATO Commercial & Government Entity Code identifier), Country of Origin and Security Classification (Security Policy Framework on Gov.uk).

#### SECTION 2 - Complete this section if the Materiel is subject to US Trade Controls Regulations

2a Indicate whether the Materiel includes US components, parts, accessories, attachments, systems, software, content or is based on, or derived from or manufactured pursuant to, export controlled technical data, technology, defence services or software.

2b - 2c Enter whether the Materiel exported / transferred is listed on US Munitions List (USML) and if so provide the USML Category Number. This information is covered under defense articles 22 U.S.C. 2778 of the Arms Export Control Act (§120.6), technical data (§120.10), software (120.45(f)) and defense services (§120.9). (Guidance is available on the US Directorate of Defense Trade Controls website at <http://www.pmdtcc.state.gov>).

For MOD personnel MOD Policy and Guidance on the application of the ITAR regulations within the MOD can be found in JSP 248 or further support, advice and guidance can be obtained by contacting the DE&S International Relations Group Email: DES IRG-ASSC-CoE (MULTIUSER) - DESIRG-ASSC-CoE@mod.gov.uk.

For Contractor personnel, they should contact their Business Export Compliance Teams for further guidance.

2d Include all references of any applicable authorisations that accompany the Materiel and provide copies to the extent available to you.

2e - 2f Enter whether the Materiel exported / transferred is listed on the Commerce Control List (CCL) and if so provide the Export Control Classification Number (ECCN) listed on the CCL – EAR Part 774, including Materiel that falls into the catch-all categories in the CCL (guidance is available on the Bureau of Industry and Security, US Department of Commerce website at <http://www.bis.doc.gov>). Further support, advice and guidance of the application of the EAR regulations within the MOD can be obtained by contacting the DE&S International Relations Group Email: DES IRG-ASSC-CoE (MULTIUSER) - DESIRG-ASSC-CoE@mod.gov.uk.

2g Indicate whether the Materiel being supplied under EAR is authorised for export to the UK.

2h Details of the EAR Exceptions used.

#### SECTION 3 - Complete this section if the Materiel is subject to other countries Trade Controls Regulations

3a Indicate whether the Materiel being supplied is not of UK or USA origin, or is it based on, or derived from or manufactured pursuant to, export controlled technical data, technology, defence services or software.

3b Include all references of any applicable authorisations that accompany the Materiel and provide copies to the extent available to you.

#### SECTION 4 - Complete this section if the Materiel is subject to UK Trade Controls Regulations

4a Indicate whether the Materiel being supplied is derived from or manufactured pursuant to, export controlled technical data, technology, defence services or software for Military use.

4b - 4c Indicate whether the Materiel is listed on the UK Munitions List (UKML) and provide the reference UKML Number .

4d 4e Indicate whether the Materiel being supplied is listed of the UK/EU Dual Use List and if so provide the reference Dual Use Number.

4f Indicate whether the Materiel or Service being supplied is listed as 'No Authorisation Required'.

#### SECTION 5 - Complete this section if there is an End-Use / End-User Certificate requirement

5a - 5c Indicate whether the Materiel being supplied requires an End-User Certification or Transfer Authority and if so (or being obtained) include copies to the extent available to you.

#### PAGE 2 - Cell reference descriptors

2a - Does the Materiel originate in USA or contain any US sourced article or technology or have any US Person content contribution, including software?

2b - USML Listed?

2c - USML Category Number:

2d - If answered Yes to 2a and 2b, please provide export authorisation reference, confirmation it is held or the duration to obtain it and provide a copy of the authorisation supplied by the OEM to the extent available to you (for each asset):

2e - CCL Listed?

2f - CCL ECCN:

2g - If answered Yes to 2e is a export authorisation required to export the Materiel to the UK?

2h - Exceptions used:

3a - For Materiel not of UK or USA origin, is an export authorisation required to move the Materiel to the U.K. from the country of origin?

3b - If answered Yes to 3a, please provide export authorisation reference, confirmation it is held or the duration to obtain it and provide a copy of the authorisation supplied by the OEM to the extent available to you (for each asset).

4a - Is the Materiel designed or modified for military use?

4b - UKML Listed?

4c - UKML category number:

4d - Is the Materiel UK/EU Dual Use Listed?

4e - UK/EU Dual Use Number:

4f - Is your product rated as "No authorisation Required"?

5a - For Materiel to be provided by a Contractor to MOD - Is an End-User Certificate required? If Yes MOD to provide.

5b - For Materiel to be provided by MOD to a Contractor - Is re-transfer authority required? If Yes MOD to obtain and the Contractor to provide all reasonable assistance (e.g. DSP-83, TAA).

5c - If answered Yes to 5a or 5b, please provide end-use certificate or re-transfer authority reference(s), confirmation it is held or the duration to obtain it and provide a copy of the authorisation held to the extent available to you (for each asset).

Import and  
Export Control Information

Contract No.	
1a: Supplier Name	
1b: Address	
1c: City/State	
1d: Post/Zip Code	
1e: Country	
1f: CAGE/NCAGE	

The recipient of the Material will require the information below for each item of Material supplied. Please record the information for all Contractor Deliverables. Assistance to complete the form will be provided by text prompts in certain cells and can also be found on the Guidance for Completion of Form page. Please use one row per Contractor Deliverable.

[illegible]



[illegible]

### Declaration

**I certify that the information provided on this DEFFORM 528 is true, complete and accurate to the best of my knowledge. If there is any change that effects the control classification as described on this Form or I become aware of anything that causes the response to no longer be true, complete and accurate, or if any inaccuracies are identified, I will inform the other party in writing as soon as I become aware of such change.**

Printed name	
Position or Job Title Held in Company / MOD	
Address	
E-Mail	
Telephone number	
Signed (Duly authorised person)	
Date of signature	

***Please print off this Declaration Sheet and provide a signed copy with your Tender submission***



NOT USED

## **CONTRACT DATA REQUIREMENT**

This document has been redacted in full.

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